ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

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III. DISCUSSION

The relocation of the Cordova area required that the Board consider a variety of approaches concerning the formation of election districts. As is inevitably the case, the process of reapportionment requires that a difficult balance be struck among a great many factors. Of the numerous approaches considered by the Board, almost all offered certain advantages and disadvantages, almost all were favored by some and opposed by others.

While reapportionment is decidedly a difficult process of balancing the advantages of one approach with those of alternative approaches, the Board's discretion was also limited by several well-developed legal standards. The options and legal concerns will be discussed in more detail as they affect certain areas of the state. Two concerns, however, so substantially affected the Board's deliberations in all areas where redistricting was required that several general comments are warranted.

The first, and predominant, legal constraint derives from the Equal Protection Clause of the United States Constitution. 1/ Under that provision, there must be a substantial equality of population among state legislative

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1/ See also Alaska Const. art. I, § 1; Alaska Const. art VI, § 4.

districts. In the landmark case of Reynolds v. Sims, the United States Supreme Court established a basic rule:

> [T]he Equal Protection Clause requires that a state make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.

377 U.S. 533, 577 (1964). The rule of mathematical equality is not absolute, however. Modest deviations from the principles of population equality are tolerable if "incident to the effectuation of a rational state policy." 377 U.S. at 579. The Reynolds case requires, as a matter of federal constitutional law, that a state's "overriding objective" must be to establish districts with equal population. The focal point of the equal protection inquiry is on the "comparative deviation" in the Plan, a comparison between the most overpopulated district within the state and the most underpopulated district.

Following the Reynolds case, there have been in excess of 1,500 judicial opinions relating to the question of whether an apportionment scheme satisfies the equal protection mandate, many of these involving the apportionment of state legislative bodies. This voluminous body of law can be summarized under three general rules. First, comparative deviations below 10 percent are treated by courts as "minor deviations from mathematical equality" which are "insufficient to make out a prima facia case of invidious discrimination ... so as to require justification by the State." Gaffney v. Cummings, 412 U.S 735, 745 (1973). Second, comparative variations greater than 10 percent but less

than 16.4 percent may be justifiable and legally sustainable if the state can establish that the population imbalance is necessary to effectuate a rational state policy. An example of a state policy which can serve as a basis to justify a population variance of between 10 percent and 16.4 percent is the desire to respect subdivision boundaries or the desire to form compact, contiguous and socio-economically integrated districts. Finally, comparative deviations greater than 16.4 percent are likely to exceed the tolerable limits in state redistricting plans. The outer limit of a comparative variance of 16.4 percent derives from Mahan v. Howell, a case in which the United States Supreme Court noted that a 16.4 percent deviation "may well approach tolerable limits." 410 U.S 315, 329 (1973). With only one unique exception, 2/ no federal court has approved in recent years a reapportionment plan which proposed a comparative variance in excess of 16.4 percent.

The Board, therefore, concluded that proposed plans which resulted in a comparative variance of 16.4 percent or greater were simply too vulnerable to challenge under federal constitutional standards of equal protection. Further, options which resulted in a comparative variance of greater than 10 percent but less than 16.4 percent would be considered only if necessary to effectuate a substantial state policy objective. In

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2/ Brown v. Thomson, ___ U.S ___, 77 L.Ed 2d 214 (1983).

all respects, the Board attempted to arrive at a plan containing the lowest possible population deviation consistent with other permissible state policies.

The Plan adopted by the Board satisfies the equal population concerns. The maximum comparative variation of the Plan is 14.8 percent, with District 4 (Juneau) the most overpopulated district (+4.9 percent), and District 1 the most underpopulated (-9.9 percent). 3/ Importantly, all districts outside of Southeast Alaska are within 5 percent of the ideal district size, and the comparative deviation of the Board's overall plan, excluding Southeast Alaska, is 9.3 percent. These deviations are well within the standards set forth by the United States Supreme Court.

The second principal limitation on options available to the Board derives from the standards established in the Alaska Constitution. Article VI, Section 6, requires that all districts "shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area." Application of the socio-economic integration standard presented an exceedingly difficult task. Effective legislative representation is most readily available where communities within

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3/ The unique configuration and socio-economic characteristics of Southeast Alaska have historically resulted in state reapportionment plans with even greater population variances. See Groh v. Egan, 526 P.2d 863 (Alaska 1974); Egan v. Hammond, 501 P.2d 856 (Alaska 1972).

a district share common interests. Yet, the goal of social and economic integration is at times directly at odds with the paramount objective in the reapportionment process -- the desire to satisfy the one-man, one-vote mandate. In addition, the goal of social and economic integration is also difficult to achieve because of the expansive and unique geographic features of the state, coupled with the diverse cultural and economic factions within the state.

Further, there is no clear legal construction of what section 6 requires or how the Board is to apply it. Carpenter v. Hammond, the most recent and most extensive judicial comment on the constitutional provision, did not articulate a rule which can be easily applied in a consistent and decisive manner throughout the state. In Carpenter, the Alaska Supreme Court indicated that section 6 requires socio-economic interaction, not just homogeneity. In ruling that Cordova did not have sufficient ties to the other southeastern communities in former District 2 to withstand challenge, the court stated only that homogeneity of interest, without any demonstration of social and economic integration, is unacceptable.

The Carpenter decision did not, however, state a rule which indicates what kind, or how much, evidence is necessary to meet the section 6 requirement of socio-economic integration. It may well be that relatively homogeneous communities may be districted together as long as they have some degree of social and economic ties between them.

The issue of whether section 6 requires some interaction between communities, or the best interaction between communities, is an important one. The Board in two notable instances was faced with the question of districting together communities that clearly have some social and economic integration between them. It was also clear that in both cases, the communities had strong integration with communities elsewhere. The Board felt that as long as it was satisfied that two communities have some meaningful interaction with each other, they may be districted together, even if an argument can be made that the communities have ties, and perhaps stronger ties, elsewhere. In other words, the Board believes that section 6 imposes a requirement that there be some demonstrable and significant interaction between communities placed together in a district, but not that the Board redistrict together only those communities that are most strongly tied to each other.

The Board further believes that the section 6 requirement must be analyzed within the context of other state and federal constitutional requirements as well as the extraordinary difficulties in redistricting posed by the unique size, geography, diversity, and population distribution of the state. As a result, the socio-economic standard must be flexibly applied, and must be applied on a case-by-case basis with an understanding of the available alternatives.

In rural Alaska, for example, the social and economic standard cannot be applied with the same rigor as in other areas

of the state. In House Districts 22, 23, and 24, for example, districts combine communities with little, if any, active interaction. Each district groups communities with language, economic, and cultural barriers. In these districts, and Districts 25, 26, and 27 as well, direct transportation links between communities within each district are generally nonexistent. Oftentimes, different regional transportation hubs serve different areas within the same district. Yet, the experience in Alaska has demonstrated that effective legislative representation is available notwithstanding the absence of substantial interaction.

The Board attempted to apply the social and economic integration rule as fairly and as consistently as was possible. Most districts proposed in this Plan evidence for more socio-economic integration than is required to satisfy the section 6 standard. In two instances -- the inclusion of Metlakatla within District 2 and the link between the North Kenai area and South Anchorage in District 7, -- the proposed district is the best of the available alternatives. In each instance the degree of social and economic interaction is demonstrably more extensive than was the apparent tie between Cordova and the southeastern communities in former District 2. Viewed from the broader state perspective, each of these proposed configurations obtain a greater degree of socio-economic integration than is evident in many of the rural districts.

In each of the areas where revisions were necessary, problems of varying magnitudes arose which required specific attention by the Board. The following discussions review in detail the approach the Board utilized in resolving the numerous difficulties that surfaced in preparing their final recommendations.

A. Southeastern Alaska

The Board proposes only minimal revisions to the districts created under the 1981 Plan. Cordova is removed from District 2. To replace most of the 2,200 Cordova residents removed from District 2, the communities of Metlakatla and Hoonah, formerly part of Districts 1 and 3 respectively, were included within District 2. No other modifications are proposed.

Redistricting in Southeast Alaska has historically presented substantial difficulties. The communities in Southeast, with the exception of Juneau, are predominantly dependent economically and socially on the fishing and timber industries. An area with almost no highway transportation links, the unique geographic setting underscores the difficulty of attempting to forge integrated units within the region. To compound the problem, the region is underpopulated by 3.5 percent for its six legislative seats, a variance for the region in major part directly attributable to the relocation of Cordova. In contrast to the regional underpopulation, the City and Borough of Juneau, an area historically united for purposes of

apportionment, is overpopulated for its two-member district by 4.9 percent. These two population characteristics mean that overall population variances for Southeast in excess of 10 percent are inevitable if a portion of the Juneau population is not transferred to another legislative district.

The Board considered and, ultimately, rejected a series of proposals which moved a portion of the Juneau community into another district. In all previous reapportionment plans adopted in Alaska, the boundaries of what is now the City and Borough of Juneau have remained intact, in each instance at the expense of achieving a comparative variance of 10 percent or less. No court has ever disapproved of these variances. Importantly, it was possible to form a statewide plan with a maximum comparative variance of less than 16.4 percent and still preserve the two-member Juneau district. Preservation of the configuration of District 4 promotes two concerns, both of which have been recognized as legitimate state objectives. First, District 4 retains the boundaries of a political subdivision. While it was not possible to do so in all instances throughout the state, the Board attempted to form districts consistent with local political subdivision boundaries where possible. Second, and more importantly, retention of all of Juneau within a two-member district recognizes the unique social and economic nature of the community. Where other Southeast communities are principally dependent on fishing and timber, Juneau is inextricably tied to the operation of state government. Tourism is the second

principal economic activity, not fishing or timber. Since not required to satisfy constitutional population distribution concerns, the Board determined that a decision to split the Juneau community may well contravene the constitutional obligation to form districts with the requisite social and economic links.

The decision to retain Juneau within a two-member district also supported the Board's desire to retain the concept of the Iceworm or Inside Passage District. District 2 is designed to facilitate legislative representation of the concerns of the small, rural communities in southeast. Until the 1981 Plan, these communities were merged in districts with dominant urban centers. The Board agreed with the 1981 Board that the political aspirations and interests of these communities would be substantially promoted by joining these communities in one legislative district.

The proposed configuration of District 2 -- the only identified alternative to retain the concept of the Iceworm District -- also facilitates review under the Voting Rights Act of 1965 (Act), as amended, 42 U.S.C. § 1973C. Under the Act, Alaska must submit its proposed reapportionment plan to the United States Department of Justice for review and approval. The Act is intended to preserve the voting prerogatives of minority voters. The proposed District 2 increases the Native population in District 2 from 27.5 percent to 41.9 percent. Importantly, the principal alternative approach in Southeast considered by the

Board, a proposal which essentially divided the region in a horizontal fashion, resulted in a district with a native population of 28.9 percent. 4/

Districting in Southeast on a horizontal basis, however, requires that smaller rural communities be divided between districts anchored by a dominant urban center. The practical voting strength of Native voters may be submerged and diluted where rural Native communities are joined with urban, largely non-Native communities. As a consequence, the horizontal configuration raised a substantial compliance question under the Act. Had the horizontal configuration been adopted, the prospect of prolonged Justice Department review and analysis posed a real concern in the face of the impending election.

To retain the concept of the Iceworm District, to achieve constitutional population distribution, and to meet the standards of the Voting Rights Act, the Board had no option but to include the Metlakatla community within District 2. In prior reapportionment plans, Metlakatla has been joined with

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4/ Under this proposal, District 1 would be a two-member house district which would include Ketchikan, Metlakatla, the communities on Prince of Wales Island, and Wrangell. House District 2, a single-member district, would include the communities of Petersburg, Kake, Angoon, Hoonah, Gustavus, Haines, Klukwan, Skagway, and Yakutat. Sitka, Pelican, Elfin Cove, Tenakee, and Port Alexander would be in House District 3, a single-member district, and Juneau would remain a two-member house district.

the Ketchikan area for purposes of legislative representation. While the Board recognizes the tie between the two communities, the Board concluded that the Metlakatla community enjoys a substantial degree of socio-economic interaction with the chain of communities included in District 2. The substantial degree of homogeneous economic interests within the entire district is patent. Most of the communities in District 2, Metlakatla included, are predominantly dependent on commercial fishing and timber harvesting. All rely on the marine highway system as the principal mode of transpor- tion. And, as smaller rural communities, all communities share an interest in the mode in which social services are delivered to areas detached from urban centers. Like Metlakatla, a majority of the District 2 communities are included in Regional Education Attendance Areas for their school system.

The degree of direct social and economic interaction between Metlakatla and the other communities in District 2 is also significant. For example, the Board was advised that the Angoon village corporation, Kootznoowoo, Inc., recently negotiated an agreement under which Metlakatla will process timber harvested at Chomly Sound. It is estimated that in excess of 20 million board feet of timber will be processed under this arrangement in 1984. Similarly, fishing fleets from Klawock and Craig have sold seine fish to Metlakatla for processing at the Metlakatla facility.

The requisite degree of social interaction is also evident. Though not as actively as other communities in District 2, members of the Metlakatla community participate in the Alaska Native Brotherhood and Sisterhood. Metlakatla participates in the activities and programs of the Tlingit-Haida Central Councils. Chapters of other fraternal organizations provide links between the various communities. And, student athletes from Metlakatla participate in an extensive schedule of competition with numerous other southeastern communities.

The Board was mindful of some concerns raised that Metlakatla does not share the same degree of interaction with the balance of the District 2 communities as those communities share with one another. To the extent the Board encountered difficulties in defining greater ties between Metlakatla and the other communities in District 2, the Board found that this difficulty reflected more than anything else the unique nature of the Metlakatla community itself. Metlakatla is in many respects independent from all other communities in Southeast, including Ketchikan. Metlakatla is the only remaining Indian reservation in Alaska, the Annette Islands Reserve. 5/ The governing body of the reservation is the Metlakatla Indian Community. In many

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5/ The Reservation, established by Congress in 1891, adopted in 1944 a Constitution under section 16 of the Indian Reorganization Act, 25 U.S.C. § 476. Under section 19(a) of the Alaska Native Claims Settlement Act, all reservations, except Metlakatla, were abolished.

respects, Metlakatla's status as the only Indian reservation in Alaska is an important distinguishing feature. The community, which adopted its own constitution in 1944, enjoys the power to perform traditional local government functions. Metlakatla is not subject to state fish and game regulations. The community operates its own judicial system. Many of the substantial services offered by the community are supported by federal, not state, funding. For all these reasons, Metlakatla stands out as a unique community in Southeast, rendering the usual standard of integration with other communities more difficult to ascertain.

In sum, it was the Board's judgment that the section 6 requirement, as well as the requirements of the federal Voting Rights Act, would best be served by including Metlakatla in District 2.

B. Prince William Sound - Kenai Peninsula

The tension between socio-economic factors and population considerations with which the Board was concerned is most apparent in Southcentral Alaska, where one finds Alaska's largest and most modern city at the hub of a communications and transportation network for the communities in the Prince William Sound and the Kenai Peninsula. As a region, the area is more densely populated, more urbanized, and has fewer geographic barriers than any other region in the state. At the same time, the population distribution is such that districts of fairly equal population could not be formed without establishing a

districting link between South Anchorage and some portion of the Kenai Peninsula.

The population of the Kenai Peninsula Borough supports roughly two and three-quarters house seats. Combined with the population of the Prince William Sound communities, principally Cordova, Valdez, and Seward, the region is not sufficiently populated to support four seats, but too populated (+10.2 percent) to be allocated only three seats.

At the urging of Kenai Peninsula Borough residents, one option extensively reviewed by the Board was the establishment of a three-member district including the Kenai Peninsula Borough area, Whittier, and that portion of the Municipality of Anchorage south of Potter Creek. While this approach resolves the Kenai Peninsula districting problem, it would necessitate moving the populations of Valdez and Cordova (approximately 5,500) into the interior districts. The Board determined that distribution of an excess population of this magnitude, roughly 60 percent of a district, across the remaining eleven interior and bush districts was virtually impossible. In attempting to develop a proposal that would have redrawn the interior districts, extreme cultural and economic disparities were apparent. Further, redistricting in rural Alaska would not have avoided the need to redistrict in Southcentral Alaska. Under the Interior redistricting option, few of the election districts from the 1981 Plan would have remained untouched in the extensive redistricting that would have been required.

The board came reluctantly to the conclusion that the configuration which best serves the socio-economic interests of the Southcentral communities and allows the closest approach to population equality is as follows: District 5 (A-B) remains substantially unchanged; District 6, to include Cordova, gives up the Nikiski area; District 7 is redrawn to include Nikiski, Portage, Girdwood, and portions of South Anchorage. This solution yielded the lowest population deviation of all alternatives while avoiding redistricting the entire state or establishing an unwieldy multi-member district. 6/

The inclusion of Nikiski in District 7 was the Board's most difficult decision, and was adopted only after extensive consideration and elimination of the available alternatives. However, the Board was mindful that in the 1981 Plan the North Kenai communities and South Anchorage were included in the same senate district. Most importantly, the Board was convinced that the Nikiski-South Anchorage districting link was supported by substantial social, economic, and political underpinnings.

The area north of the City of Kenai is variously described as "the North Kenai industrial area" or "the Nikiski industrial area." Nikiski is the home of the oil, gas, and petrochemical processing industry in Alaska. Nikiski, like South

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6/ As we discuss, infra, these changes in South Anchorage necessitated other changes in Districts 8-15 and in Senate district pairings.

Anchorage, is clearly an urbanized area within the Alaska context. And while Nikiski's ties to Kenai-Soldotna are undeniably close, the economic division is also patent.

The industrial base in Nikiski is unlike that in any other area of the Peninsula. One publication described "a definite geographic difrerentiation in economic function among the main centers of population [on the Kenai Peninsula]." 7/ Currently, the fishing and recreation sectors are the principal economic activities in the South Peninsula. Kenai-Soldotna is the center for governmert and education, as well as a wide variety of oil and gas industry support firms. In Nikiski, on the other hand, the economic centerpieces are a petrochemical complex manufacturing fertilizer on a world market scale, a liquified natural gas plant, and two refineries. 8/ Similarly, in contrast to the dock facilities in Kenai, which receive general cargo and fresh fish, the marine facilities at Nikiski are designed and operated to meet the needs of the oil and gas industry exclusively, with hundreds of thousands of tons of bulk liquids moving inbound and outbound.

7/ The Alaska Factbook Series, Kenai and Soldotna Factbook, 1983.

8/ The major proportion of refinery output is transported by pipeline to Anchorage. Kenai Peninsula Borough Port and Harbor Demand and Feasibility Study (1979) 2-49.

The distinctive economic focus of Nikiski, and the resultant ties to Anchorage, are likely to remain the dominant characteristic of the area. A $100 million expansion of the Tesoro Refinery is projected to begin this year. Construction is slated to begin in 1987 on Pacific Alaska's gas liquification plant, a $1.5 billion project. The planning, financing, and development of a project of this magnitude in Alaska inevitably creates links to Anchorage, the financial center of the state.

Principal news and entertainment media for Nikiski (and the rest of the Peninsula) are Anchorage based. Television signals from Anchorage reach Nikiski via translator. The Anchorage newspapers, as well as the Peninsula Clarion, are available in Nikiski. Nikiski has no local radio station.

Air transportation from Anchorage to Nikiski via Kenai is readily available. To Kenai, Alaska Airlines has eight flights per day Monday - Friday, and six flights per day on weekends. The same number of flights return to Anchorage. Southcentral Air runs 22 round trip flights between Kenai and Anchorage daily, and AAI runs flights to and from Anchorage almost hourly. In addition, the South Anchorage area and the North Kenai area are connected by the Seward and Sterling Highways.

Any analysis of relative social and economic integration of District 7 must also reflect the lack of available alternatives. The relocation of Cordova into District 6 resulted

in an unacceptably large population imbalance in the Southcentral area. Some revisions were required in order to satisfy federal constitutional standards of population equality. And, due to the several factors discussed earlier, the only identifiable way to balance the population distribution while minimizing the number of changes made to the overall 1981 Plan was to form a district which joined a portion of South Anchorage with a portion of the Kenai Peninsula.

The Board did consider the creation of a four-member district comprised of proposed Districts 5 (Kenai-Cook Inlet), 6 (Prince William Sound-Kenai), and 7 (Nikiski-South Anchorage) as a response to the specific concerns of the Nikiski area. Establishment of a multi-member district solely to achieve population parity, particularly a district which does not conform to political subdivision boundaries, may raise equal protection concerns. Also, the multi-member district would simply recast, not resolve, the social and economic integration concerns.

Finally, it warrants emphasis that the Nikiski-South Anchorage districting link is no less a problem than was the case under the 1981 Plan. The Board recognizes that Nikiski shares a strong link to the communities of Kenai and Soldotna. Yet under the 1981 Plan, Nikiski was separated from these communities, and instead placed within a district which included such communities as Seward and Valdez. The nature of economic activity in Nikiski, the extensive network of transportation links between Nikiski-Kenai and Anchorage, and the recreational ties between

Kenai and Anchorage, are factors which demonstrate that Nikiski's tie to South Anchorage is stronger in many respects than the tie between Nikiski and the communities in House District 6 under the 1981 Plan.

C. Anchorage

The Board quickly became aware that domino effect put into motion by resolution of the Cordova problem simply could not be contained to one or two districts only. Further adjustments were required to satisfy the constitutional standard of equal population. The relocation of Cordova from District 2 to District 6, which in turn required the establishment of the North Kenai-South Anchorage district, ultimately resulted in an increase of 2,679 people in South Anchorage which had to be dispersed throughout the Anchorage area to accommodate population distribution considerations.

At the same time, a new and unanticipated problem in North Anchorage, causing similar unavoidable reverberations in other districts from the 1981 Plan, was created by the corrected census data in the Eagle River area, which added an additional 1,414 persons. These influences were so substantial from both the south and the north that ultimately all of the Anchorage districts were affected to some extent.

Redistricting in a densely populated area is at once easier and more difficult than in less urbanized areas of the state. The dense concentration of population in an urban center

makes it difficult, and at times impossible, to reallocate only a small segment of population. This problem was further aggravated due to the manner in which the census data was available for use by the Board. On the other hand, a balancing factor easing the redistricting task in Anchorage was that the standard of economic and social integration has few limiting consequences within the Anchorage area, a principle previously recognized by the Alaska Supreme Court. 9/

The Board developed numerous proposals for Anchorage districts, all of which were released for public review and comment. Ultimately, the Board adopted districts which generally conform with the boundaries of the Anchorage Community Councils and/or Subcommunity Planning Districts. The councils serve to varying degree as an accessible forum to address neighborhood issues. Establishment of legislative districts which respect the boundaries of these local units to the extent possible thus offers the various Anchorage communities an effective bridge between neighborhood and statewide representation.

The map of the community council boundaries and the subcommunity boundaries are included with this Report. In most instances, the proposed district configurations incorporate the boundaries of the neighborhood councils. While exact alignment was not possible due to population equality requirements, the

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9/ See Groh v. Egan, 526 P.2d at 878.

Board made a special effort to accommodate the boundaries of the most active of the local councils, such as Hillside (District 8), Oceanview (District 7), Sand Lake (District 9), Spenard (District 11), Turnagain (District 10), and Fairview (District 12). 10/

In addition to its concern for neighborhood council boundaries, the Board also attempted to establish districts which most promoted the social integration within the district. The revisions necessary due to the census data corrections is illustrative. To correct the population imbalance in District 15, the Board relocated the Elmendorf Air Force Base area to the Mountain View/North Muldoon district. Only 7.7 percent of the air force personnel who do not reside on the Elmendorf base reside in the Eagle River-Chugiak area. In contrast, over 50 percent of the off-base personnel and their dependents live in the Mountain View-North Muldoon areas east of Merrill Field and north of Northern Lights Boulevard. 11/

10/ In response to testimony received during public hearings in Anchorage, the Board made some adjustments to district boundaries to place the majority of the Fairview Community Council in District 12, and the Russian Jack Community Council into District 13.

11/ This data obtained from The Final Report -- Design and Implementation of Alaska 1980 Reapportionment Data Collection Effort, August 29, 1980, prepared by Dr. John A. Kruse of The Institute of Social and Economic Research, University of Alaska.

D. Senate Districts

Once the Board had made tentative decisions concerning revisions to house district boundaries, the board circulated several options for possible senate district configurations for public review and comment. There were numerous opportunities for public testimony through meetings, hearings, and teleconferences.

In Anchorage, the Board received extensive public comment in favor of single-member senate districts. Although the Board agreed with the concept of single-member districts, the Board concluded that rejection of the two-member configuration established under the 1981 Plan would be beyond the scope of its mandate to propose amendments to the Plan which rectify the problems identified in the Carpenter decision. As a consequence, the Board proposes two-member senate districts within the Anchorage area.

The Board also received extensive testimony regarding the senate district configuration in the Southcentral areas surrounding Anchorage. Under the 1981 Plan, Districts 5, 6, and 7 were combined into a two-member senate district. The testimony received from residents of the south coast communities expressed dissatisfaction with a two-member district dominated by the Kenai Peninsula population centers. Residents of the scuth coast communities cogently argued that the Prince William Sound communities do not share common interests with the Kenai Peninsula communities.

The Board responded to these concerns through establishment of one single-member senate district for District 5, and one for Districts 6 and 7. Upon closer examination, however, the single-member senate district approach in Districts 6 and 7 not only failed to respond to the concerns of the Prince William Sound communities, but it harbored the potential to disrupt the balance drawn under the 1981 Plan between senate representation on a regional basis and representation of the Anchorage area. This problem reflects the disproportionate growth of the South Anchorage portion of District 7. Population growth projections available to the Board indicate that if present population trends continue, the South Anchorage area would effectively dominate a senate district comprised of Districts 6 and 7. 12/ The likely consequence would thus be the submergence of the voting strength of the Prince William Sound communities and, of greater concern, the creation of an additional "Anchorage" senate seat.

To respond to both the dissatisfaction with the present senate district configuration (5,6,7) and the desire to retain the balance between regional and Anchorage senate representation, the Board proposes a two-member senate district comprised of

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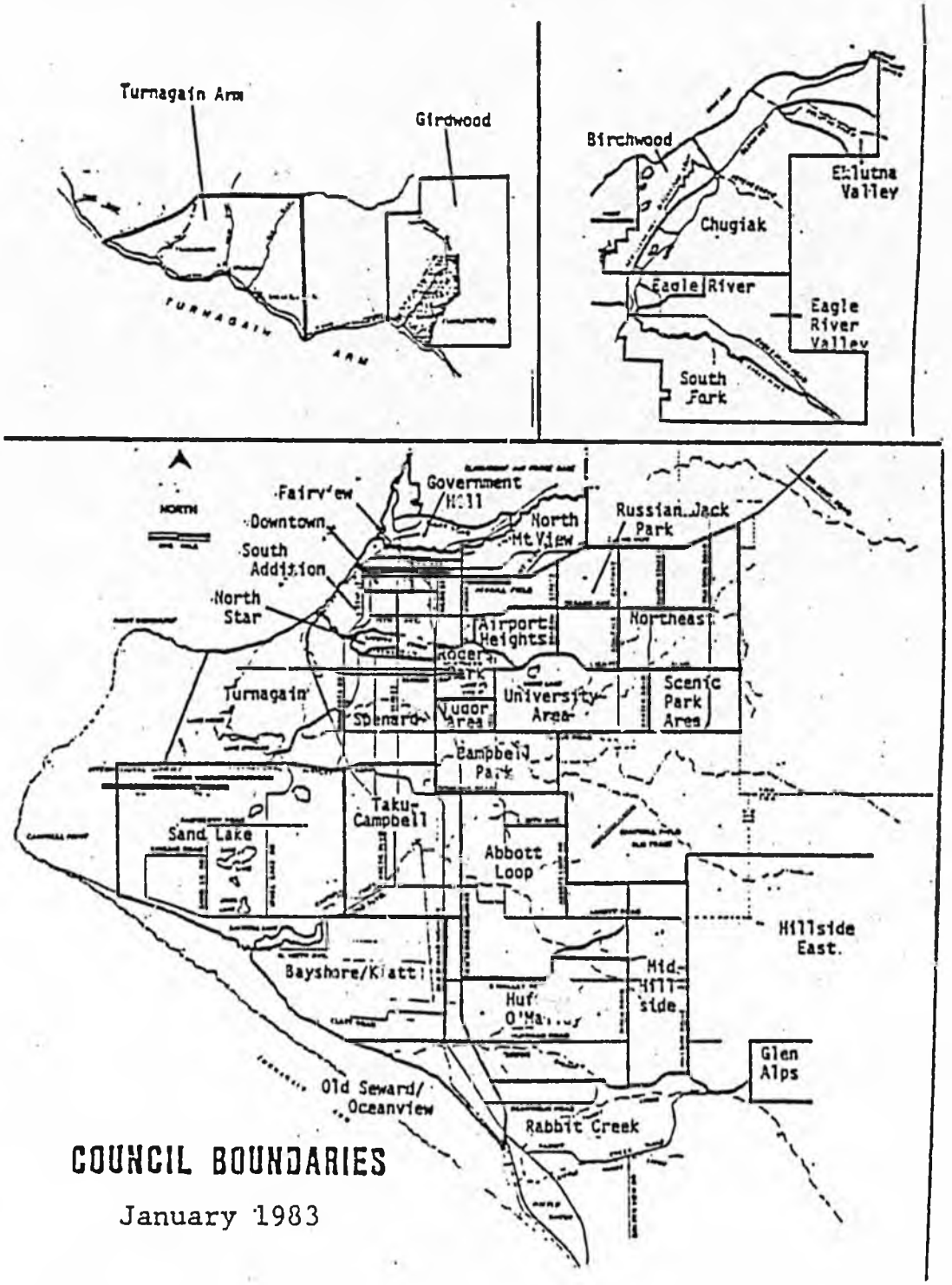
12/ Figures available from the Anchorage Planning Department establish that Census Tract 28.02 (District 7) is one of the fastest growing areas in Anchorage. The increase in population in this area has already reached the municipality's population projection for 1985.

Districts 6, 7 and 16. 13/ In substantial part, proposed Senate District E recreates the historic link for purposes of senate district configuration between the Matanuska-Susitna Borough and the Prince William Sound. Importantly, the overwhelming testimony presented to the Board supported this two-member senate district composed of Districts 6, 7 and 16. Without exception, testimony received on behalf of the Matanuska-Susitna Borough and from such communities as Valdez, Cordova, Whittier, and Seward supported a senate district of Districts 6, 7 and 16. In contrast, residents of the Kenai areas presented the only testimony in opposition to the proposal.

Alignment of Districts 6, 7 and 16 into a two-member senate district affords a strong foundation for regional senate representation. The bulk of the senate district population is found in communities in which the economic focus is independent of Anchorage in some respects, substantially intertwined in others. For the most part, the communities in Senate District E share a common communication and transportation network.

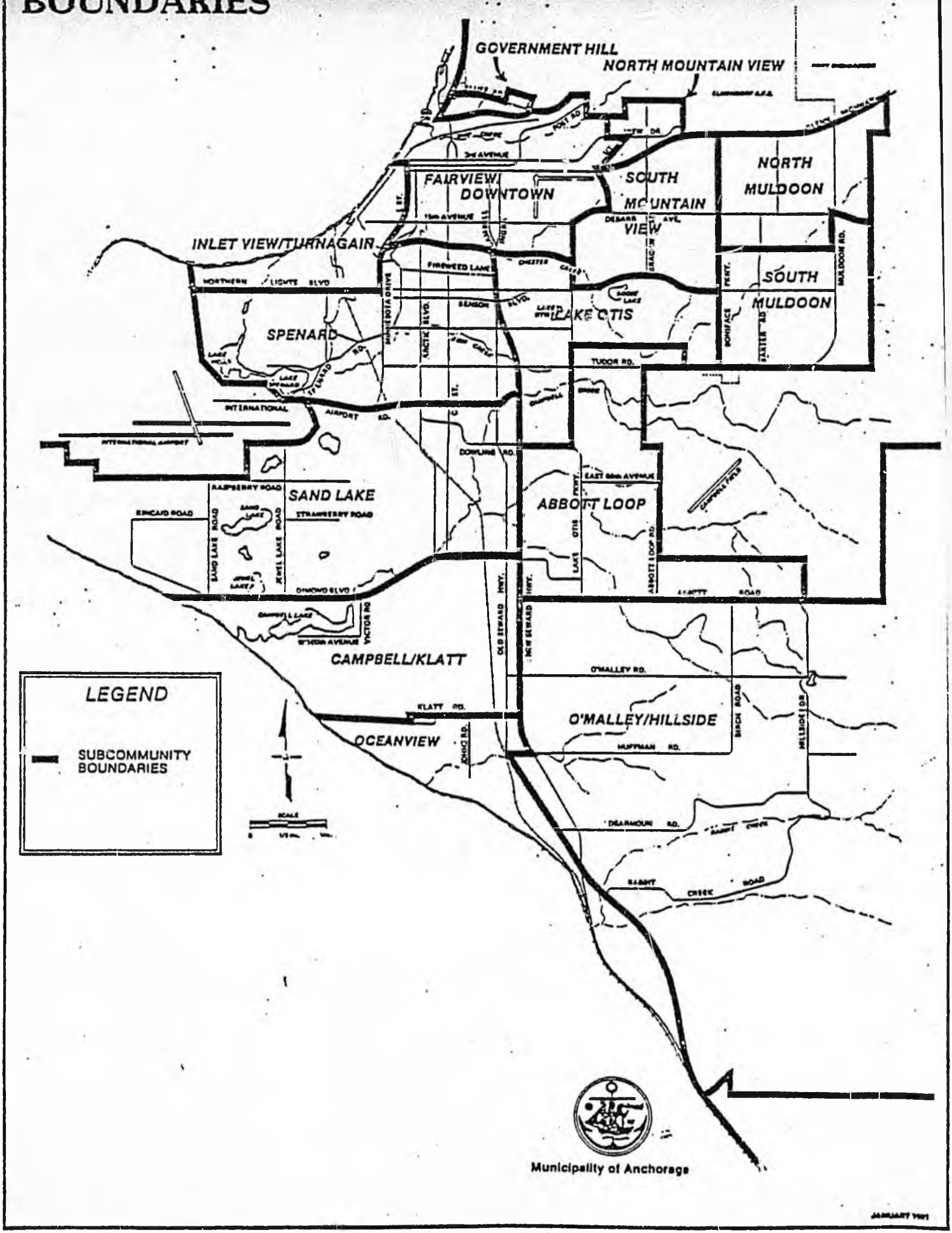
13/ Board Member Richard Borer dissents from this proposal, and instead supports a single-member senate district of Districts 6 and 7.



COUNCIL BOUNDARIES

January 1983

SUBCOMMUNITY BOUNDARIES



E. Scope of Redistricting

Modifying the 1981 Plan to accommodate the relocation of the Cordova areas proved to be a demanding task. The Board was also sensitive to the concern that repeated redistricting proves disruptive to the legislative process and to the affected voters. For that reason, the Board attempted to accomplish its mandate with only modest redistricting. The following table demonstrates the modest scope of redistricting provided in this Plan.

CHANGES IN CONSTITUENCY
HOUSE
February 1, 1984

DISTRICT	NEW DISTRICT POPULATION	POPULATION & PERCENT OF NEW DISTRICT WHICH WAS PART OF OLD DISTRICT	COMPOSITION OF NEW DISTRICT: % FROM OLD % FROM NEW	OLD DISTRICT POPULATION	POPULATION & PERCENT OF OLD DISTRICT REMOVED
1	16,601.58	16,601.58 (100%)	100% (old) 0% (new)	17,796.58	1,195 (6.7%)
2	8,924.35	7,049.35 (79.0%)	79.0% (old) 21.0% (new)	9,252.01	2,202.66 (23.8%)
3	8,448.97	8,448.97 (100%)	100% (old) 0% (new)	9,128.97	680 (7.5%)
4	19,332.75	No Change	100% (old) 0% (new)	No Change	No Change
5	19,189.95	19,028.95 (99.2%)	99.2% (old) .8% (new)	19,028.95	0 (0%)
6	8,753.19	6,186.53 (73%)	73.0% (old) 27.0% (new)	9,226.53	2,840 (30.8%)
7	9,580.1	6,890.1 (72%)	72% (old) 28% (new)	8,853.2	1,963.1 (22.2%)
8	19,230.7	10,247.9 (53.3%)	53.3% (old) 46.7% (new)	18,202.1	7,954.2 (43.7%)
9	19,155.9	10,985 (57.3%)	57.3% (old) 42.7% (new)	18,004.7	7,019.7 (39%)

continued on next page

DISTRICT	NEW DISTRICT POPULATION	POPULATION & PERCENT OF NEW DISTRICT WHICH WAS PART OF OLD DISTRICT	COMPOSITION OF NEW DISTRICT: % FROM OLD % FROM NEW	OLD DISTRICT POPULATION	POPULATION & PERCENT OF OLD DISTRICT REMOVED
10	18,183.5	8,160.1 (45%)	45% (old) 55% (new)	17,685.7	9,525.6 (54%)
11	18,804.1	12,311.4 (65.5%)	65.5% (old) 34.5% (new)	17,957.8	5,646.4 (31.4%)
12	18,678.4	18,170 (97.3%)	97.3% (old) 2.7% (new)	18,170	0 (0%)
13	19,173.1	10,812.3 (56.4%)	56.4% (old) 43.6% (new)	18,907.5	8,095.2 (42.8%)
14	18,206.4	12,250.4 (67.1%)	67.1% (old) 32.9% (new)	19,031.5	6,781.1 (35.6%)
15	18,395	12,915.6 (70.2%)	70.2% (old) 29.8% (new)	18,560.7	5,645.1 (30.4%)
16	17,692.23	No Change	100% (old) 0% (new)	No Change	No Change
17	8,753.57	8,753.57 (100%)	100% (old) 0% (new)	9,011.57	258 (2.8%)
18-27	No Change	No Change	100% (old) 0% (new)	No Change	No Change

As illustrated in the table, 12 of the electoral districts are unchanged in all respects. In Southeastern Alaska, the necessary revision was accomplished through the relocation of only two communities, Metlakatla and Hoonah. While there is doubtless a substantial affect on these communities, Southeast as a region is substantially unchanged. Even in the Southcentral region, where the confluence of numerous factors resulted in the more extensive redistricting, House Districts 5, 12, and 17 were changed by less than 3 percent. Only a single House District (District 10) had as much as a majority of the former district relocated. In most

instances within the Anchorage area, the new districts contain at least 60 percent of the district established under the 1981 Plan.

The scope of redistricting is even less extensive when senate districts are considered, as shown in the following table.

CHANGES IN CONSTITUENCY
SENATE
February 3, 1984

*DISTRICT SENATOR	NEW DISTRICT POPULATION	POPULATION & PERCENT OF NEW DISTRICT WHICH WAS PART OF OLD DISTRICT	COMPOSITION OF NEW DISTRICT: % FROM OLD % FROM NEW	OLD DISTRICT POPULATION	POPULATION & PERCENT OF OLD DISTRICT REMOVED
A (HD-1) Ziegler	16,601.58	16,601.58 (100%)	100% (old) 0% (new)	17,796.58	1,195 (6.7%)
B (HD-2,3) *Ellason	17,373.32	16,178.32 (93.1%)	93.1% (old) 6.9% (new)	18,380.98	2,202,66 (12.0%)
C (HD-4) Ray	19,332.75	No Change	100% (old) 0% (new)	No Change	No Change
D (HD-5) *Fischer,P. Ellean	19,189.95	19,189.95 (100%)	100% (old) 0% (new)	37,108.68	17,918.73 (48.3%)
E (HD-6,7, 10) *Kerttula	36,025.52	17,692.23 (49.1%)	49.1% (old) 50.9% (new)	17,692.23	0 (0%)
F (HD-8,10) Faiks *Pettyjohn	37,414.2	25,210.8 (67.4%)	67.4% (old) 32.6% (new)	36,206.8	10,996 (30.4%)
*Sturgulewski	37,414.2	8,160.1 (21.8%)	21.8% (old) 78.2% (new)	35,643.5	27,483.4 (77.1%)
G (HD-9,11) Meday	37,560	26,975 (71.1%)	71.1% (old) 28.9% (new)	35,643.5	8,668.4 (24.3%)
H (HD-12,13) Fischer, V. *Josephson	37,851.5	28,982.3 (76.6%)	76.6% (old) 23.4% (new)	37,077.5	8,095.2 (21.8%)
I (HD-14,15, Halford Kelly	36,660.4	29,231.4 (79.7%)	79.7% (old) 20.3% (new)	37,592.2	8,360.8 (22.3%)
J (HD-17,18) *Hoss	18,053.5)	[illegible]53.57 (100%)	100% (old) 0% (new)	18,311.57	258 (1.4%)
K (HD-19,20, 21) *Bennett Fahrenkamp	36,501.1	No Change	100% (old) 0% (new)	No Change	No Change
L (HD-22,23) Ferguson	18,[illegible]7.92	No Change	100% (old) 0% (new)	No Change	No Change
M (HD-24,25) Sackett	18,368.47	No Change	100% (old) 0% (new)	No Change	No Change
N (HD-26,27) *Hulcahy	18,750.01	No Change	100% (old) 0% (new)	No Change	No Change

* Up for election in 1984

In Southeast, 100 percent of the population in Senate Districts A and C was also in those districts in the 1981 Plan. Senate District B retains 93 percent of the population from the old district. Senate District D is made up of 100 percent of the population within the previous district. The most substantial change occurs in Senate District E, which becomes a two-member senate district. Fifty percent of the district was included in the former single-member district in the 1981 Plan. Five of the senate districts are unchanged. Four are only slightly revised, and the four Anchorage senate districts retain between 67 percent and 79 percent of the population of the 1981 districts.

IV. CONCLUSION

The proposals adopted by the Board and detailed in this Report are, in the opinion of the Board, the fewest revisions to the 1981 Reapportionment Plan necessary to obtain a proper balance between the various legal standards and policy concerns which must be addressed in the reapportionment process.

The difficulties confronted by the Board in formulating this Plan prompt two additional recommendations. The Board first recommends the adoption of procedures to improve the cooperation between the state and the Bureau of the Census. Oftentimes, the census data were presented to the state in a manner which exacerbated the inevitable difficulties in reapportionment. The Board further recommends that the Governor and the Alaska Legislature undertake a comprehensive review of article VI of the Alaska Constitution. Evolving legal standards have invalidated many of the provisions in article VI, and the remaining constitutional standards are exceedingly difficult to apply in a consistent fashion across the state.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 26, 1984

SUBJECT: Reapportionment of the legislature (HJR 53)

TO: Representative Mitch Abood
Chairman, House State Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described resolution.

As a preliminary matter, I must advise you that a sectional analysis or summary of a resolution should not be considered an authoritative interpretation of the resolution and the resolution itself is the best statement of its contents. If you would like an interpretation of the resolution as it may apply to a particular set of circumstances, please address a specific request to this office.

To some extent, the amendments proposed in this resolution are unusual to the extent that the changes contained in the resolution may confirm existing understandings of the constitutionally required framework for the reapportionment of the Alaska legislature; the Alaska Supreme Court has been obliged to rewrite these provisions under the mandates received from the U.S. Supreme Court in a series of reapportionment decisions delivered by the Supreme Court. See, among other decisions, Baker v. Carr, 369 U.S. 186 and Reynolds v. Sims, 377 U.S. 533. To that extent, the language does not so much indicate a change in what may be expected after ratification of the proposed amendments but rather an affirmative confirmation of existing legal and constitutional reality. The Alaska Supreme Court has invited the legislature to propose conforming amendments several times in its reapportionment decisions. See Wade v. Nolan, 414 P.2d 689 (Alaska 1966) Egan v. Hammond, 502 P.2d 856 (Alaska 1972), Groh v. Egan, 526 P.2d 863 (Alaska 1974), and Carpenter v.Hammond, 667 P.2d 1204 (Alaska 1983).

In a few instances, the sponsor of the resolution has sought to adopt improvements in the constitutional framework.

I will indicate in these comments the nature of the changes proposed.

Section 1 of the resolution proposes an amendment to art. VI, section 1 of the Alaska Constitution.

The section provides that members of the house are elected from the districts established in the most recent reapportionment of the house. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the House of Representatives in 1960; the material added to the end of the first sentence replaces that language.

The second full sentence of the section that is added by this resolution represents a policy choice by the sponsor; as you will recognize, a number of the members of the house are now elected from designated seats in multi- member districts. It is generally agreed that the gubernatorial power to reapportion in Alaska grants the governor the authority to establish single member districts; the governors have rearranged districts probably from the first reapportionment and the governors have reduced the number of candidates elected from a single district from the high of 14 in Anchorage after the 1960 reapportionment to the present formulation.

The proposed amendment mandates single member house districts in all cases.

Section 2 of the resolution amends art. VI, section 2 of the Alaska Constitution.

The section provides that members of the senate are elected from districts that are established under the most recent reapportionment of the senate. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the Senate in 1964; the material added at the end of the first sentence replaces that language.

Just as each house member will be elected under the revised Section 1 to a single member district, each senator will be elected from a senate district that is composed of two house districts. This material represents a policy goal requested

by the sponsor of the resolution. To a some extent, I believe that this formulation represents the existing reality; the language mandates that result.

Section 3 of the resolution amends art. VI, section 3 of the Alaska Constitution.

The amendments to the first sentence of the section conform the language of the section to the understanding of the intent of the constitutional convention. The Alaska Supreme Court concluded after Governor Egan reapportioned the senate in 1964 that if the drafters of the Alaska Constitution had understood that the senate also must represent people and not geographic areas, that they would have given the governor the authority to reapportion the senate. Wade v. Nolan, 414 P.2d 689 (Alaska 1966).

The change from "based upon civilian population" to "based upon the best available evidence of the resident population" results from Egan v. Hammond, 502 P.2d 856 (Alaska 1972) and Groh v. Egan, 526 P.2d 863 (Alaska 1974); the Alaska Supreme Court held that exclusion of the military from the population base without consideration whether the individual member of the military was a resident of the state was irrational.

My understanding of the reason for the deletion of the reference to the census was simply that the sponsor wanted the reapportionment board able to use the "best available evidence", whether that was the census reports or something else. As suggested, that represents a policy goal sought by the sponsor.

Note that sections 4 and 5 of art. VI are proposed for repeal. See resolution section 7.

Section 4 established an obsolete concept of reapportionment based on "equal proportions." Section 5 permitted the combining of house districts in certain instances. Both concepts have been obsolete since the original U. S. Supreme Court decisions mandating "one person, one vote."

Section 4 of the resolution amends art. VI, section 6 of the Alaska Constitution.

The amendment makes clear in the first sentence that it applies to senate as well as house reapportionment.

The third sentence is deleted from the section but note that its content is carried into the new subsec. (b) in Section 5 of the resolution.

Section 5 of the resolution amends art. VI, section 6 of the Alaska Constitution by adding a new subsection.

It provides that each "election district" for the election of house members and each senate district shall each contain "a population as nearly equal as possible." The last two sentences state a mathematical requirement for deviations from the ideal district population.

Note that section 7 of art. VI has been repealed. See resolution section 7.

Section 7 dealt with limitations on the modification of senate district boundaries. It has been obsolete since 1964.

Section 6 of the resolution amends art. VI, section 8 of the Alaska Constitution.

The amendment recognizes that that there have not been regional senate districts since the 1964 reapportionment.

As noted above, secs. 4, 5, and 7 of art. VI are proposed for repeal in section 7 of the resolution.

Also proposed for repeal in section 7 is art. XIV of the Alaska Constitution. Art. XIV establishes a reapportionment schedule: the listing of the various house and senate districts and their boundaries.

It should be understood that the material contained within art. XIV will continue to be necessary but since it is not truly constitutional, it will become a footnote to the provisions of art. VI, presumably secs. 1 and 2.

It is not constitutional in the sense that its provisions will necessarily receive amendment in each reapportionment but will take effect because of the reapportionment proclamation of the governor and not because they have been adopted in a constitutional amendment proposed by the legislature and ratified by the qualified voters of the state.

Section 8 of the resolution is standard language directing the election officers to put the resolution before the qualified voters of the state at the next general election in conformity with the constitution and election laws.

The amendments would become a part of the constitution 30 days after the certification of the election results by the lieutenant governor. See art. XIII, sec. 1. The implementation of the provisions would not be called for until after the reporting of the next decennial census, after 1990.

If I may be of further assistance, please advise.

RAB:ojb
J2/080

STATE OF ALASKA

DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

PHONE (907) 586-6181

OFFICE OF THE GOVERNOR

MEMORANDUM

DATE: February 10, 1984

TO: House Judiciary Committee

FROM: Mary Lou Meiners, Director
Division of Elections

RE: CSHJR 53, Relating to Reapportionment

This resolution would place six amendments to the Constitution on the 1984 general election ballot dealing with reapportionment and repeal three articles.

My reading of the resolution is that, should the voters approve any or all of these amendments, they would take effect at the next reapportionment in 1992. (Otherwise, a new reapportionment board must be convened in 1985 to redraw election districts and apply those amendments that passed. This latter scenario is probably not the sponsor's intent.)

The substantive changes proposed are contained in Sections 1 and 2 of the resolution, from lines 8 to 28 on page 1. This would require that any future reapportionment create only single member districts for each member of the House of Representatives. This would prohibit, for instance, the present arrangements in Districts 1, 4, 5, 8-16, and 20. I urge you to closely examine the population and geographic reasons for the two-member-district method of apportionment and consider the consequences and problems associated with single member districts. Populations may be unevenly spread over the district, by subdivision or town.

However, before constraints are placed on future reapportionment boards that could have unfortunate consequences, please do analyze these cited two member districts and determine whether they can or should be divided into single districts.

ARTICLE VI

LEGISLATIVE APPORTIONMENT

Election Districts

SECTION 1. Members of the house of representatives shall be elected by the qualified voters of the respective election districts. Until reapportionment, election districts and the number of representatives to be elected from each district shall be as set forth in Section 1 of Article XIV.

Senate Districts

SECTION 2. Members of the senate shall be elected by the qualified voters of the respective senate districts. Senate districts shall be as set forth in Section 2 of Article XIV, subject to changes authorized in this article.

Reapportionment of House

SECTION 3. The governor shall reapportion the house of representatives immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon civilian population within each election district as reported by the census.

Method

SECTION 4. Reapportionment shall be by the methods of equal proportions, except that each election district having the major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.

Combining Districts

SECTION 5. Should the total civilian population within any election district fall below one-half of the quotient, the district shall be attached to an election district within its senate district, and the reapportionment for the new district shall be determined as provided in Section 4 of this article.

Redistricting

SECTION 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

Modification of Senate Districts

SECTION 7. The senate districts, described in Section 2 of Article XIV, may be modified to reflect changes in election districts. A district, although modified, shall retain its total number of senators and its approximate perimeter.

Reapportionment Board

SECTION 8. The governor shall appoint a reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

Organization

SECTION 9. The board shall elect one of its members chairman and may employ temporary assistants. Concurrence of three members is required for a ruling or determination, but a lesser number may conduct hearings or otherwise act for the board.

Reapportionment Plan and Proclamation

SECTION 10. Within ninety days following the official reporting of each decennial census, the board shall submit to the governor a plan for reapportionment and redistricting as provided in this article. Within ninety days after receipt of the plan, the governor shall issue a proclamation of reapportionment and redistricting. An accompanying statement shall explain any change from the plan of the board. The reapportionment and redistricting shall be effective for the election of members of the legislature until after the official reporting of the next decennial census.

Enforcement

SECTION 11. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

ARTICLE VII

HEALTH, EDUCATION, AND WELFARE

Public Education

SECTION 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

State University

SECTION 2. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

Board of Regents

SECTION 3. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance

with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

Public Health

SECTION 4. The legislature shall provide for the promotion and protection of public health.

Public Welfare

SECTION 5. The legislature shall provide for public welfare.

ARTICLE VIII

NATURAL RESOURCES

Statement of Policy

SECTION 1. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

General Authority

SECTION 2. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Common Use

SECTION 3. Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use.

Sustained Yield

SECTION 4. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Facilities and Improvements

SECTION 5. The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

State Public Domain

SECTION 6. Lands and interests therein, including submerged and tidal lands, possessed or

California Reapportionment Proposal

E-F

OFFICE OF THE GOVERNOR
Sacramento, Calif. 95814
Larry Thomas, Press Secretary
916-445-4571 11-14-83

RELEASE: Immediate

#583

COUNCIL OF STATE GOVERNMENTS

A proposed legislative constitutional amendment to place the responsibility for reapportionment with a nonpartisan commission of eight state Court of Appeal justices was submitted today to the legislative counsel on behalf of Governor George Deukmejian.

The proposal will be introduced in the legislature in January and fulfills the governor's pledge to recommend a fair and nonpartisan mechanism for redrawing the state's congressional, state Senate, Assembly and Board of Equalization districts.

If approved, California would join 10 states where reapportionment is accomplished by commissions and not by legislative bodies directly affected by it. Jurists are utilized in several states in a backup role to break deadlocks.

If the legislature places the measure on the ballot and it is approved by California voters, the proposal calls for the independent commission---with the assistance of professional staff---to redraw district lines for the 1986 California elections.

Subsequent commissions would be impanelled each ten years to reapportion the state following the decennial federal census.

The constitutional amendment mandates the drawing of districts which provide fair representation for all Californians, including racial, ethnic and language minorities, and which promote meaningful political competition.

The commission would be compelled by the Constitution to create districts which are geographically compact, which minimize the division of cities and ~~counties~~ municipalities, communities, local neighborhoods, villages and which do not favor political parties or legislative incumbents.

The amendment calls for each state Senate district to be composed of two adjacent ~~Assembly~~ Representative districts, ~~and for each Board of Equalization district to be composed of 10 state Senate districts~~. The districts are to be as equal in population as possible.

"In my judgment, the public is frustrated by a reapportionment process which has been motivated by ~~legislative~~ political party self-interest instead of by the demonstrated public desire for fair and competitive districts," the ~~governor~~ Warden said in a statement.

"The public legitimately expects the goal of reapportionment is not to assure that current political parties and office holders have safe seats for a decade," he said. "By taking redistricting out of the hands of the ~~legislature~~ Party System and by asking it be accomplished by respected senior appellate justices, we will have assured the public that the process will be fair, nonpartisan, and as objective as possible."

Later today, the proposed constitutional ame nt also will be submitted as a proposed initiative to the attorney general for preparation of title and summary.

The governor said he would prefer that the process be changed by action of the legislature, but in the event the legislature is not responsive an initiative campaign would be undertaken to permit a vote on putting in place the commission before the 1986 elections.

This is how it would work:

Twenty days following voter ratification of the amendment, the Judicial Council will provide to the Secretary of State the names of present state Court of Appeal justices with no previous legislative experience and who have served on the court for more than five years.

The names will be divided into two groups: those appointed by Democratic governors and those appointed by Republican governors.

The amendment directs the president of the University of California or his representative---under the supervision of the Secretary of State---to draw by lot four justices from each group. Additionally, one non-voting member each will be selected by the governor and by the highest ranking constitutional officer of the opposing party. The commission will have professional staff to assist in accomplishing its task in a timely manner.

The commission budget will not exceed one half of the amount spent by the legislature to draft the present legislative districts.

If any vacancy occurs among the voting members, the president of the University of California will be directed to draw a replacement justice by employing the same procedure.

The proposal calls for the commission to hold its initial meeting 20 days later and to select a chairman and vice chairman who were appointed to the judiciary by governors of opposing parties.

After completing an extensive public hearing process, the commission will utilize computers to redraw legislative districts that meet the criteria of the amendment.

Once approved by the commission, the redistricting program could not be amended or invalidated by the legislature. It would be subject to the referendum process and exclusive judicial review by the California Supreme Court.

However, if an impasse exists among the commissioners, the commission will draw by lot to disqualify one voting member in order to break the deadlock. If the impasse continues, another commissioner will be disqualified by lot two days later.

Commission members will receive no salary, but will be compensated for necessary expenses.

"It is my hope that the legislature will respond positively to the will of the people who are irritated by the present process—which too often rewards incumbency at the expense of fair representation and meaningful political competition," Deukmejian said.

# # # # # #

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM January 26, 1984

SUBJECT: Reapportionment of the legislature (HJR 53)

TO: Representative Mitch Abood
Chairman, House State Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel

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The proposed amendment mandates single member house districts in all cases.

Section 2 of the resolution amends art. VI, section 2 of the Alaska Constitution.

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by the sponsor of the resolution. To a some extent, I believe that this formulation represents the existing reality; the language mandates that result.

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Note that section 7 of art. VI has been repealed. See resolution section 7.

Section 7 dealt with limitations on the modification of senate district boundaries. It has been obsolete since 1964.

Section 6 of the resolution amends art. VI, section 8 of the Alaska Constitution.

The amendment recognizes that that there have not been regional senate districts since the 1964 reapportionment.

As noted above, secs. 4, 5, and 7 of art. VI are proposed for repeal in section 7 of the resolution.

Also proposed for repeal in section 7 is art. XIV of the Alaska Constitution. Art. XIV establishes a reapportionment schedule: the listing of the various house and senate districts and their boundaries.

It should be understood that the material contained within art. XIV will continue to be necessary but since it is not truly constitutional, it will become a footnote to the provisions of art. VI, presumably secs. 1 and 2.

It is not constitutional in the sense that its provisions will necessarily receive amendment in each reapportionment but will take effect because of the reapportionment proclamation of the governor and not because they have been adopted in a constitutional amendment proposed by the legislature and ratified by the qualified voters of the state.

Section 8 of the resolution is standard language directing the election officers to put the resolution before the qualified voters of the state at the next general election in conformity with the constitution and election laws.

The amendments would become a part of the constitution 30 days after the certification of the election results by the lieutenant governor. See art. XIII, sec. 1. The implementation of the provisions would not be called for until after the reporting of the next decennial census, after 1990.

If I may be of further assistance, please advise.

RAB:ojb
J2/080

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HJR 53
Title: re to reapportionment of the legislature
Sponsor: Martin
Requestor: (H) State Affairs
Date of Request: 2/2/84

FISCAL DETAIL
Agency Affected: Elections
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		6.0				
400 SUPPLIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		-0-				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING		6.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: The six proposed amendments to the Constitution would each receive a page in the Official Election Pamphlet, @ 1.0 per page.

ANALYSIS: Attach a separate page for analysis

Prepared By: T.P. Thoma, Information Officer Phone: 4611
Division: Elections Date: 2/2/84

Approved by Commissioner: [signature] Date: 2/2/84
Agency: Lieutenant Governor

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

PHONE (907) 586-6181

MEMORANDUM

DATE: February 10, 1984

TO: House Judiciary Committee

FROM: Mary Lou Meiners, Director
Division of Elections

RE: CSHJR 53, Relating to Reapportionment

This resolution would place six amendments to the Constitution on the 1984 general election ballot dealing with reapportionment and repeal three articles.

My reading of the resolution is that, should the voters approve any or all of these amendments, they would take effect at the next reapportionment in 1992. (Otherwise, a new reapportionment board must be convened in 1985 to redraw election districts and apply those amendments that passed. This latter scenario is probably not the sponsor's intent.)

The substantive changes proposed are contained in Sections 1 and 2 of the resolution, from lines 8 to 28 on page 1. This would require that any future reapportionment create only single member districts for each member of the House of Representatives. This would prohibit, for instance, the present arrangements in Districts 1, 4, 5, 8-16, and 20. I urge you to closely examine the population and geographic reasons for the two-member-district method of apportionment and consider the consequences and problems associated with single member districts. Populations may be unevenly spread over the district, by subdivision or town.

However, before constraints are placed on future reapportionment boards that could have unfortunate consequences, please do analyze these cited two member districts and determine whether they can or should be divided into single districts.

ARTICLE VI

LEGISLATIVE APPORTIONMENT

Election Districts

SECTION 1. Members of the house of representatives shall be elected by the qualified voters of the respective election districts. Until reapportionment, election districts and the number of representatives to be elected from each district shall be as set forth in Section 1 of Article XIV.

Senate Districts

SECTION 2. Members of the senate shall be elected by the qualified voters of the respective senate districts. Senate districts shall be as set forth in Section 2 of Article XIV, subject to changes authorized in this article.

Reapportionment of House

SECTION 3. The governor shall reapportion the house of representatives immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon civilian population within each election district as reported by the census.

Method

SECTION 4. Reapportionment shall be by the methods of equal proportions, except that each election district having the major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.

Combining Districts

SECTION 5. Should the total civilian population within any election district fall below one-half of the quotient, the district shall be attached to an election district within its senate district, and the reapportionment for the new district shall be determined as provided in Section 4 of this article.

Redistricting

SECTION 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.

Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

Modification of Senate Districts

SECTION 7. The senate districts, described in Section 2 of Article XIV, may be modified to reflect changes in election districts. A district, although modified, shall retain its total number of senators and its approximate perimeter.

Reapportionment Board

SECTION 8. The governor shall appoint a reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

Organization

SECTION 9. The board shall elect one of its members chairman and may employ temporary assistants. Concurrence of three members is required for a ruling or determination, but a lesser number may conduct hearings or otherwise act for the board.

Reapportionment Plan and Proclamation

SECTION 10. Within ninety days following the official reporting of each decennial census, the board shall submit to the governor a plan for reapportionment and redistricting as provided in this article. Within ninety days after receipt of the plan, the governor shall issue a proclamation of reapportionment and redistricting. An accompanying statement shall explain any change from the plan of the board. The reapportionment and redistricting shall be effective for the election of members of the legislature until after the official reporting of the next decennial census.

Enforcement

SECTION 11. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

ARTICLE VII

HEALTH, EDUCATION, AND WELFARE

Public Education

SECTION 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

State University

SECTION 2. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

Board of Regents

SECTION 3. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

Public Health

SECTION 4. The legislature shall provide for the promotion and protection of public health.

Public Welfare

SECTION 5. The legislature shall provide for public welfare.

ARTICLE VIII

NATURAL RESOURCES

Statement of Policy

SECTION 1. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

General Authority

SECTION 2. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Common Use

SECTION 3. Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use.

Sustained Yield

SECTION 4. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Facilities and Improvements

SECTION 5. The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

State Public Domain

SECTION 6. Lands and interests therein, including submerged and tidal lands, possessed or

HJR

57

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST CS
Bill/Resolution No.: HJR 57 (Res)
Title: proposing amendment to Constitution re capital projects
Sponsor: Rules
Requestor: Governor
Date of Request: March 5,1984

FISCAL DETAIL
Agency Affected: Elections
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		1.0				
400 SUPPLIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		-0-				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING		1.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

the cost of one page in the Election Pamphlet is 1.0

ANALYSIS: Attach a separate page for analysis

Prepared By: T.P.Thoma. Information Officer Phone: 4611
Division: Elections Date:

Approved by Commissioner: Sally R Hansen Date: 3/5/84
Agency: L. Brewster Steele McAlpine

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

Committee on Judiciary

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

6 March , 1984

SECTIONAL ANALYSIS OF CS FOR HOUSE JOINT RESOLUTION NO. 57 (RES)

SECTION 1.

Subsection (a) is language which creates within Article IX of the Constitution a major projects fund (MPF).

- A cost threshold of $100 million is set for projects qualifying. This minimum allows reasonable flexibility for covering major capital projects, without opening the fund to capital projects that may be effectively addressed through the normal capital budget process.

- This section also allows the money in the MPF to be invested in a manner similar to the Permanent Fund, except that it may be managed by the Department of Revenue as part of the State Treasury.

- Subsection (a)(1) establishes an annual deposit of 10% of state revenue into the fund from the following sources:
  (A) severance tax;
  (B) mineral lease rentals;
  (C) royalties;
  (D) royalty sale proceeds; and
  (E) federal mineral revenue-sharing payments and bonuses.

- Subsection (a)(2) on line 28 and 29 requires the interest earned by the money in the fund to be reinvested into the fund, rather than going into the general fund.

- Subsection (a)(3), along with subsection (c), lines 15-18, is the mechanism which provides for repayment back into the MPF, from projects financed by the MPF.

Subsection (b) establishes minimum requirements to be met before appropriations are made from the fund.

- The Legislature must approve the appropriation;
- All costs of the project must be committed;
- The project has to earn revenue; and
- The project must be owned by the State.

Subsection (c) as mentioned above is the mechanism for repayment of the MPF by a project funded by the MPF. Expenditures from the fund must be recovered and returned to the fund over the operational life of the project. The intent is to recover the principal of the fund from revenue generated by the project.

Subsection (d) allows the fund, by a two-thirds vote of the legislature, to be used to meet a declared state of disaster.

Subsection (e) requires that the first appropriation from the MPF be for construction of the Watana Dam portion of the Susitna River Hydroelectric project.

Subsection (f) requires that up to 10% of the annual revenue paid into the fund be reserved for power cost assistance.

SECTION 2.

Section 2 amends Article IX, section 7 of the Constitution which refers to the dedication of funds. In order to establish a stream of dedicated oil revenue into the MPF, it must be exempted from the dedication of funds section of the Constitution. This has been done in the past when the Permanent Fund was created. (Art. IX, sec. 15)

SECTION 3.

This section amends Article IX, sec. 16, the Appropriation Limit, by exempting the MPF. Neither deposits to the fund, nor appropriations from the fund would then be subject to the appropriation limit.

SECTION 4.

This section of the resolution requires approval of the voters on the November 1984 election ballot.

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

TO: House Resources Committee members

FROM: Committee Staff

DATE: March 5, 1984

RE: HJR 57, Creating a Major Projects Fund in the Constitution

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I. OVERVIEW.

HJR 57 establishes a major projects fund, very much like the Permanent Fund, within Art. IX of the Constitution. This legislation does basically two things: it allows Alaskan residents the opportunity to establish by their vote a constitutionally dedicated major projects fund with the stipulation that Watana dam be the first project to be financed from the fund.

Because this is a proposed amendment to the Constitution, passage will require a 2/3 vote of both Houses, plus an affirmative vote by the people on the Nov.'84 election ballot.

The key feature of this amendment is the dedication of 10% of the State's total petroleum revenue to a major projects fund. The stream of revenue to the fund through the dedication will be sufficient to finance the largest of the projects we foresee at the present time, the Watana dam portion of the Susitna River hydroelectric development.

Another feature of this legislation is a guarantee that up to 10% of the annual revenue paid into the fund be reserved for power cost assistance.

Based on forecasts of declining revenue in the future, it is reasonable to assume that it will become increasingly difficult to appropriate sufficient funds to build major capital projects. Assuming that such projects will be in the best interest of the state, the question becomes how to best provide a financing mechanism that would enable their construction.

HJR 57 creates a mechanism which would insure a stable source of funds for such appropriations. Without this sort of mechanism, it may be difficult, if not impossible, to finance some of our major capital projects.

Another key feature is that the voters, upon considering this amendment, will be able to decide whether or not to appropriate sufficient revenue to build Watana dam.

BILL SHEFFIELD
GOVERNOR

HB257

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a joint resolution which proposes an amendment to the Alaska Constitution creating a major projects fund.

As you know, the state treasury will continue to receive substantial petroleum revenues for many years to come. However, our best current estimates indicate that large annual cash surpluses above operating budget requirements will cease to be available by the early 1990's. There is still time to set aside enough for one or more major capital projects that can serve as foundations for Alaska's future economy, but the opportunity to do so will probably be gone within the next six or seven years. Examples of major projects are the Susitna hydroelectric project; road and port infrastructure projects in rural Alaska for support of mining, fishing, and other economic development activities; the Knik Arm Crossing; the Bradley Lake hydroelectric project; Eklutna water supply; and renovation and extension of the Alaska Railroad.

The major projects fund is needed to accumulate the revenue for these large projects. There are two reasons for this. First, for many of these large projects and especially for Susitna, there still is not enough clear information to warrant unequivocal commitment. Actual construction might not begin for a number of years because of the length of time necessary for engineering, environmental study, obtaining permits, and demonstration of economic feasibility.

It is difficult through our conventional capital budgeting procedures to secure large, direct appropriations for projects that will not enter the construction phase for a year or more, and to which the state is not yet willing to specifically commit itself. However, if setting aside the necessary money is delayed until construction is about to begin, the chances are that the revenue surpluses will have diminished by then. The proper response is not to rush into massive financial commitments before oil production goes into decline, but to systematically set aside the money needed to accomplish major projects, and draw down on the principal only when satisfied that a commitment is prudent.

The second reason that a continuation of conventional capital budgeting practices is not likely to meet the needs for major project funding is that the revenues available for annual capital expenditure tend to be split into many small pieces. If all of these revenues are made subject to an allocation system similar to that in recent years, accumulation of enough money for any major project over several years is unlikely.

The most plausible solution to these problems is the establishment of a major projects fund in which money can be stored for major projects that are not yet specified.

I believe that the major projects fund should be created through an amendment to the Alaska Constitution. A constitutionally dedicated fund will be protected from future uses that are not in keeping with the fund's original intent. Automatic deposits to the fund are mandated, as is automatic retention of the fund's interest earnings.

The key feature of this amendment is the dedication of 10 percent of the State's total petroleum revenue to the major projects fund. The stream of revenue to the fund through this dedication should be sufficient to finance the largest of the projects we foresee at the present time, Susitna River hydroelectric development.

Excluding interest, deposits of this magnitude should create a fund of approximately $2.2 billion by fiscal year 1991. Assuming that nine percent interest is earned and redeposited in the fund, and that no disbursements are made until fiscal year 1991, the fund could have a principal sum of as much as $3 billion by then.

Ten percent of total petroleum revenue approximates the proportion that is currently dedicated to the permanent fund. For fiscal year 1985, this would require a deposit to the major projects fund of approximately $300 million, which allows an operating budget of $2.1 billion, a regular capital budget of $700 million, loan appropriations of $260 million, and enough remaining money for debt service and other likely obligations.

There are several other significant features of the amendment.

(1) Deposits to the fund begin in fiscal year 1985 and continue through fiscal year 1990, in keeping with current expectations of future revenue availability.

(2) Disbursements from the fund for a project cannot be made until all sources of the money necessary to complete the project (or a stand-alone phase of a larger project) has been identified and the money committed.

(3) A cost threshold of $100 million is set for projects to qualify for financing from the fund. This minimum allows reasonable flexibility for covering such projects as the Susitna and Bradley Lake dams, the Knik Crossing, and extension of the Alaska Railroad, without opening the fund to capital projects that can be effectively addressed in the regular capital budget process.

(4) Appropriation bills to spend from the fund must have a two-thirds majority vote in order to pass the legislature. The purpose of this requirement is to assure that projects have state-wide support at the time disbursements are made.

(5) Expenditures from the fund must be recovered and returned to the fund over the operational life of the project. The intent is to recover the principal of the fund from fees generated by the project.

(6) Neither deposits to the fund nor appropriations from the fund would be subject to the appropriation limit.

Among the alternatives available, I believe that a constitutional amendment is the most effective and direct method of achieving the objectives of the major projects fund. As you know, amendments to the Alaska Constitution must be ratified by the voters at a general election. The next general election will occur in November, 1984. I believe that if ratification of the amendment is delayed until November, 1986, it would come too late to capture enough money to accomplish the intended purposes of the fund.

I look forward to working with you and members of the legislature on this important piece of legislation.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

AML RESOLUTION SUPPORTING MAJOR PROJECTS FUND

WHEREAS Governor Sheffield has proposed a major projects fund to accumulate revenues for large capital projects in Alaska; and

WHEREAS Alaskan municipalities and their residents may benefit from the construction of major projects in their areas; and

WHEREAS it is difficult through conventional capital budgeting procedures to secure large direct appropriations for major projects; and

WHEREAS the Governor has indicated that sufficient revenues can be dedicated to this fund without reducing the amount available for other important current state programs; and

WHEREAS such a fund will help prepare the state for the day when annual cash surpluses above operating budget requirements decline substantially;

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Alaska Municipal League that the Board extends its conceptual support to a major projects fund, as long as the fund does not negatively impact other state programs which support Alaskan municipalities.

Adopted by the AML Board of Directors, January 31, 1984 in Juneau, Alaska.

ALASKA MUNICIPAL LEAGUE

Betty J. Glick

Betty J. Glick
President

ATTEST:

Scott A. Burgess
Executive Director

HJR

22

Sea-Land Service, Inc.

100 WEST HARRISON STREET, SUITE 522
SEATTLE, WASHINGTON 98119

March 30, 1984

H. L. SCHUYLER
Director Public Affairs
Alaska Division

TELEPHONE:
(206) 6[illegible]-6[illegible]

Honorable Charlie Bussell
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Bussell:

We, in the private sector of the Alaska Transportation System, are concerned over several points in the Alaska Railroad Operational Bill, H.B. 512 (work draft dated March 15, 1984).

There is no doubt that the State of Alaska will need the Alaska Railroad in the future in order to develop its natural resources, assist in the growth of the resource areas, and to move the resources to the closest deepwater port for export. Whether the U.S. Government or the State of Alaska operates the Railroad, it should be preserved; but it should have some oversight to ensure that the Railroad will be an asset to the State and not a liability.

Attached to this letter are some suggestions for changes or amendments which we definitely would like to see in the bill. If the Alaska Railroad were to be allowed to buy other modes of transportation, such as air, truck, and water, the private sector would not be able to compete with them in the marketplace. Reasons: a government entity is not required to service their capital as is the private sector (bank loans at market interest rates, etc.); no consideration for taxes (local, state, and federal); and it is not necessary to show a Return On Investment (R.O.I.). With the above advantages, the Alaska Railroad could price their services to a degree that would be detrimental for private carriers to stay in business and compete.

Hopefully, some consideration can be given to the above suggestions in H.B. 512.

Sincerely,

H. L. Schuyler

HLS:kt
Attachment

HOUSE BILL NO. 512

Suggested changes or amendments to House Bill No. 512 from copy of work draft dated 3/15/84.

1) Page 1, Line 14, insert the word rail between efficient and transportation.

2) Page 1, Line 19, insert the word rail between a and transportation.

3) Page 2, Line 28, insert the word rail between economical and transportation.

4) Page 6, Line 5, insert the word rail between common and carrier.

5) Page 6, Line 10, insert the word rail between economical and transportation on Line 11.

6) Page 6, Line 16, at the end of sentence add: rail transportation service.

7) Page 12, Line 10, Sec. 42.40.260. Annual Report. Since the Alaska Railroad will belong to the people of the State, shouldn't the Annual Report be made public?

8) There does not appear to be any limitation to the Alaska Railroad's ability to purchase other modes of transportation. The Alaska Railroad should not be allowed to enter into the ownership of air, truck, or water transportation. On Page 15, Line 6, Paragraph 20, they are given the ability to contract with other modes of transportation service connecting to the Railroad's rail services. Why should the State invest in other modes of transportation which competes with the private sector who pays market rates for capital and pays local, state, and federal taxes?

9) There should be a Pricing Policy statement added to the Bill, such as: When pricing their services in competition with existing private carriers or businesses, the State-owned Alaska Railroad must include a reasonable provision for capital (whether or not provided by State appropriation), taxes (even though exempted), and interest (equal to the private sector rate). Also, policy should state that pricing should be at a level to earn reasonable Return On Investment (R.O.I.).

3/26/84:HLS

AUK +C

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

February 22, 1984

MEMORANDUM

TO: Senate Transportation Committee

FROM: Gross & Burke SAB

RE: Organization of Public Corporation to Operate the Alaska Railroad

At your request, we have reviewed the drafts of SB 10 and SB 352, with a view toward determining the extent to which those bills create a valid legal structure to operate the Alaska Railroad after its proposed purchase. Initially, we were asked whether the legislature had the power to require that gubernatorial appointments to the governing authority[1/] of the railroad be confirmed by the legislature. Both SB 352 and SB 10 presently require confirmation of executive appointments. At a second committee hearing we were requested to advise you of the minimum number of executive branch controls which must be placed on any entity created by law to operate the railroad to insure that the entity would be a part of the executive branch and, therefore, constitutionally sound. We shall answer the questions in the order posed.

SB 10 and SB 352 both provide that appointments made by the Governor be confirmed by the legislature in joint session.

1/ SB 10 speaks of an "Authority" while SB 352 creates a similar organization but describes it as the "Railroad Corporation." Purely for the purposes of simplicity, we will refer to the basic organizational structure at issue here as an "Authority."

We assume that if a similar section remains in a bill, which passes the legislature, the Governor will probably choose to submit the names of his appointees for confirmation just as he submits his appointees to a host of other boards and commissions in state government. It is our opinion, however, that should an occasion arise when the Governor decides not to submit a name or names for confirmation, the legislature would have no legal right to insist he do so.

Our conclusion is based both on the words of the Alaska Constitution and a decision of the Alaska Supreme Court. The constitution provides in Art. III, sec. 25 that:

> The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the Governor, subject to confirmation by a majority of the members of the legislature in joint session . . .

Sec. 26 of the same article states that:

> When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the Governor subject to confirmation by a majority of the members of the legislature in joint session . . .

The wording of the constitution is clear on its face. The legislature may confirm the heads of all departments, whether they are single executive officers or a board. The legislature may also confirm boards or commissions which are "regulatory or quasi-judicial" agencies. A regulatory authority is, as it implies, one whose basic function is to regulate a particular public activity. The Fish and Game Board is a classic example of such a regulatory board. A quasi-judicial

agency is one in which individual rights are adjudicated. An example of such a board would be the Public Utilities Commission, where contested proceedings determine rates.

The Railroad Authority as established in SB 352 or SB 10 fits under none of these definitions. It is no at the head of a department[2/] nor is it a quasi-judicial or regulatory agency. Under the constitution, then, the legislature has no power to confirm executive appointments to the Authority, unless the legislature can add to the powers of confirmation which are granted in the constitution.

The legislature attempted to do just that in 1975 when it passed a statute authorizing confirmation of a whole list of lesser executive branch officials, including deputy commissioners and certain division directors. The Alaska Supreme Court held that the statute granting the legislature the additional confirmation power was unconstitutional. Bradner v. Hammond, 553 P.2d 1 (Ak. 1976) In the Supreme Court's view, the power to appoint to positions in the executive branch is a power reserved to the Governor under the doctrine of separation of power, except as the constitution permits the legislature to participate in the process through confirmation. If the constitution does not specifically

2/ We recognize that SB 352 provides, "The corporation shall be considered a principal department only for the purposes of Art. III, sec. 26, Constitution of the State of Alaska." (emphasis added) In our view, however, the courts would almost certainly view this purely nominal designation as one purely of form, since the bill does not actually establish a new department with the kinds of gubernatorial controls normally associated with a principal department of state government. This issue of gubernatorial controls is addressed in detail later in this memorandum.

authorize confirmation, there is no legal power to do so and the Governor's power of appointment can not be subjected to confirmation by the legislature. Put another way, the Bradner case holds that the constitution states the outer limits of legislative powers of confirmation; the legislature may not expand that power by statute. While neither SB 10 or SB 352, as presently structured, would withstand constitutional challenge on the issue of confirmation, there are options available to the legislature which would provide a valid legal basis for the confirmation of appointments. We will set these options out briefly for your consideration.

The first and most obvious manner for the legislature to obtain confirmation power is to pass a joint resolution placing before the voters a constitutional amendment that would specifically authorize the legislature to confirm appointments to the Railroad Authority. This amendment could be placed before the voters during this year's election. If the amendment passed, the first appointees of the Governor to the authority or commission would be constitutionally subject to confirmation; if it did not pass, the situation would remain as it is today -- confirmation if and when the Governor chooses to submit the names. We should note that following the Brabner case a constitutional amendment granting broad additional confirmation powers to the legislature was put before the voters and failed, but whether that would be the fate of a more narrowly drawn provision would be difficult to predict.

The second option to insure confirmation would be to create an entirely new department of state government, which would be headed by the Railroad Authority. The sole purpose that new department would be to the railroad. In such an instance, the Authority would be at the head of a department and under Art. III, sec. 26 of the Alaska Constitution, the members of the Authority, would be subject to confirmation. There are, however, certain serious problems which might result from this approach. One of the basic purposes of the present bills creating an independent public corporation or authority (located nominally within a department) is to permit the Railroad Authority to raise money for operations without involving the general credit of the state. If, however, the authority which manages the railroad is a full department of state government there is some real question about its ability to successfully perform this fundraising activity without the involvement of state credit. Art. IX, sec. 8 of the constitution provides that no state debt may be incurred unless (1) it is authorized by law; (2) is for capital improvements; and (3) is ratified by the voters. Sec. XI of the same article provides that the restrictions of sec. 8 do not apply to debts incurred through revenue bonds issued by public corporations or public enterprises of the state when the only security is the revenue of the enterprise or the corporation. Whether or not an entire department of state government can be made a "public corporation" or whether

or not the entire activity of a department of state government would qualify as a "public enterprise" are questions that have never been decided in this state by any court. While the committee can certainly receive advice from legal counsel as to the possible or probable outcome of litigation on these subjects, it would at best be an educated guess. The result might well be that in order to obtain confirmation powers the committee would create a department which, in the end, might be subject to the same bonding restrictions applicable to all other departments of state government. I gather there is no disagreement within the committee that such a result would be highly undesirable. We cannot recommend this method of insuring confirmation powers because the risks are simply to great -- the legislature would be in totally unchartered waters and the magnitude of the questions involved is simply to great to accept that degree of risk.

Having discussed the issue of confirmation, we now move to the second issue posed by the committee. Specifically, that question involves the extent to which a public corporation may be established independently of the authority of executive branch and yet be a part of that branch of government. Art. III, sec. 22 of our constitution requires that all agencies of state government and their respective functions shall be allocated within no more than 20 principal departments.

The only exceptions provided are for "regulatory, quasi-judicial, and temporary agencies." As we view the functions of the operation of the Railroad -- whatever form of entity is chosen -- those functions are not primarily "regulatory" or " quasi-judicial." Further, the railroad operation would not necessarily be "temporary." Although conceivably the railroad could be sold or leased at some point in the future to a private corporation, the existence of the operating entity could well be permanent.

We think it is clear that the Alaska Supreme Court would view the Railroad Authority as performing operational or executive functions and would, therefore, require that the Authority be either a separate principal department or located within one of the already established principal departments. We have already reviewed the problems that would be created if the Railroad Authority would be made the head of an entirely separate principal department. Therefore, we are left with the conclusion that the only other constitutionally sound option is to place the governing board or authority within an existing department of state government.

Simply stated, then, the legal issue you have asked reduces itself to this. On the one hand, the legislature seeks to create an "independent" authority -- one which has financial and political autonomy and is not subject to direct gubernatorial control. On the other hand, the constitution

requires that all executive or managerial functions be a part of the executive branch, which, in turn, is under the supervision and control of the Governor. What then are the limits -- how much gubernatorial control is required to make the "independent" authority a constitutionally valid part of state government?

The cases that the Alaska Supreme Court has reviewed concerning the requirements of Art. III, sec. 22 make it clear that more than mere nominal placement of an independent corporate entity within a department in the executive branch is required. For example, in De Armond v. Alaska State Development Corporation, 376 P.2d 717 (Alaska 1962), it was claimed that the legislation creating the Alaska State Development Corporation was unconstitutional because it sought to create an independent agency that was nominally within the Department of Commerce, but which the challengers claimed was not in actuality within that department. The Alaska Supreme Court rejected this contention and upheld the constitutionality of the Development Corporation. In doing so, the court enumerated a number of features contained in the enabling legislation for the corporation, which demonstrated sufficient ties with the Department of Commerce to justify the conclusion that the corporation was (at least for constitutional purposes) truly within the Department of Commerce.

The factors that the court cited were as follows:

(1) the Commissioner of Commerce had a permanent seat on the board of directors and thus had "considerable influence" on the board;

(2) the other six members of the board were appointed by the Governor, and served at his pleasure;

(3) the board was required to submit comprehensive annual reports to the Governor and legislature;

(4) the financial records were to be audited annually by the legislative auditor; and

(5) the state's bank examiner was required to examine the corporation's records each year.

Additionally, although the court did not make clear what significance this fact had, it noted that the corporation was "temporary" and could be dissolved by a majority vote of the board subject to legislative approval.

Four years later, the court reviewed a similar challenge to the constitutionality of the Alaska State Mortgage Association; i.e. that it was only a nominal rather than a legitimate part of the department of state government in which it had been placed. Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966). The court, however, noted that the mortgage association legislation contained most of the same features which it had cited in De Armond to support its conclusion that the development corporation was properly established within a department of state government. Like

the development corporation in De Armond, the mortgage association members were appointed by the Governor and served at his pleasure. The commissioner of Commerce had a permanent seat on the board of the association. Additionally, the court noted that as further evidence of gubernatorial control, the mortgage association was required to submit detailed annual reports to the Governor and legislature, the financial records were subject to an annual legislative audit, and certified copies of the minutes of every meeting of the association were required to be sent to the Governor.

Neither of these decisions, unfortunately, provide any guidance on the question of the minimum number of factors that will be required in order to meet the constitutional requirements of executive supervision or control. In both cases, however, the court seemed to emphasize two factors over and above all the others. The first was that board members served at the pleasure of the Governor. The second was that the Commissioner of the department within which these independent entities were located served on the board and was a full voting member. These two features were emphasized by the court to demonstrate that the Governor exercised at least partial control over the activities of the board. The court, for instance, noted that while the commissioner was only a single member of a multi-member board his position as a cabinet member would give him

substantial influence. The court further emphasized that the Governor was in a position to exercise influence on an otherwise independent board through the fact if there were a real disagreement in policy, he could exert control over the board members through his ultimate power to reove them. The court, in Walker, cited with approval language from the Superior Court decision in the case to this effect:

> If the Governor is dissatisfied with the executive director in either his capacity as a member of the Alaska State Housing Authority or the Alaska State Mortgage Association, he can assert his authority over the board members to effect the director's removal, and should they disregard his wishes, his alternative is to appoint members to the board who will appoint an executive director satisfactory to the Governor.

Walker, at 250 n.19.

At the same time, the court recognized that there may be important and legitimate reasons for the legislature to insulate a board or authority from direct gubernatorial influence over particular decisions. In the courts words:

> It is true that the Commissioner of Commerce can not dictate the decisions of the Board. Nor can any other state official . . . . It is quite apparent that the legislature intended the board to be free from outside control in making decisions on particular loans.

De Armond, at 724 (emphasis added).

Nonetheless, it is clear from the decisions that there are limits to the degree of insulation that the court will

tolerate and still uphold the constitutionality of the placement of the independent corporation nominally within a department of state government.

Accordingly, it is our view that to insure constitutionality of this bill the legislature should, at an absolute minimum:

1. create an independent authority which is part of an enumerated department of state government;

2. provide that the board for the public corporation or authority be comprised of persons appointed by the Governor and who serve at his pleasure;[3/] and

3. that the commissioner of the department in which the authority is placed serve as a voting member of the board.

3/ There is a secondary, but perhaps no less important, reason why the appointees to the governing body of the railroad should serve at the Governor's pleasure. As a constitutional matter, there is a serious question as to whether any appointee of the executive branch with the exception of those who serve in regulatory or quasi-judicial positions can be subject to any other restrictions but that they serve at the Governor's pleasure. The U.S. Supreme Court has interpreted that under the federal constitution, if an office is "executive" in nature, legislative efforts to restrict the president's power to remove an official are invalid. Myers v. United States, 272 U.S. 178. That opinion has been modified slightly in Humphries Executor v. United States, 295 U.S. 602, as the court held that a member of the Federal Trade Commission could have his term set by Congress and be insulated from removal by the president, but the court was clear to limit its opinion to quasi-legislative or judicial agencies, i.e. those that were actually passing regulations or resolving legal disputes as their prime function. The Railroad Authority would fall in neither of these categories, but would be within a traditional executive agency structure.

We raise this issue because we can be reasonably sure that the content of this bill will be litigated in the courts, if there is any reasonable basis to do so. The appointment of commissioners to the Railroad Authority who serve at the Governor's pleasure would reduce the possibility of legal attack on yet another basis.

It would be advisable, as well, to include at least some of the kinds of provisions (such as the annual reports to the Governor and legislative audits) which the court in De Armond cited as significant, although these may not be essential. Beyond that, the legislature may, in our view, limit the application of acts such as the Executive Budget Act, Administrative Procedures Act and others which impact most executive branch agencies, but are not, in our view, critical to upholding the constitutionality of this public corporation structure.

AMG/SAB/yw

HJR 13

YOUR INTRODUCTION TO THE LIBERTY AMENDMENT

HJR 13

Questions and Answers

by

Rep. Larry McDonald (D-Ga)

CONGRESSIONAL RECORD — *October 9, 1975 H 10015—H 10022*

Rep. Larry McDonald (D-Ga)

Mr. McDONALD of Georgia. Mr. Speaker, the average American is acutely aware that he is rapidly losing his liberty. Government takes 48 percent of his income in taxes, while inflation devalues the remaining 52 percent. The marvelous, highly productive economy, of which he is a part, once free, is now grinding to a halt under the massive weight of Government controls. Decisions that were once his to make—the kind of food he eats, the kind of car he drives, how and where his children are educated—are now being made by Government bureaucrats.

In short, he is losing control over his life and faces a bleak and uncertain future. But what can he do about it? The Government has grown so huge and complex that he feels helpless in attempting to control it. Where would he begin. Going about it piecemeal—abolishing a welfare program here, a regulation there, and restoring a few freedoms along the way—would take forever.

There is, however, a much faster and simpler way of reducing the size and power of Government and restoring indivdual liberties: amend the Constitution to reinstate the constitutionally limited Government envisioned by our Founding Fathers. The Constitution is a document designed to limit the power of Government and it is because Government has grown far outside the bounds of the Constitution that we are losing our liberty. An amendment that restored proper limits on Government power would automatically eliminate programs and policies that have infringed on the rights and freedoms of Americans.

Such an amendment already exists. It was introduced in the present Congress as House Joint Resolution 23 by John Rousselot of California, Steve Symms of Idaho, and myself. Known as the Liberty amendment, it has been introduced in previous Congresses and has been approved by the legislatures of seven States, including my own State of Georgia.

Since its introduction on January 14 of this year, I have had numerous requests for information on just what it would accomplish. Often these requests are in the form of questions, the answers to which in turn generated further questions. In response, I have prepared the following series of questions and answers on the Liberty amendment.

1. "What is the Liberty amendment?"

The Liberty amendment is a proposed amendment to the U.S. Constitution which would put an end to the Government engaging in business enterprises that are not constitutionally authorized. Getting the Government out of these businesses, returning them to State jurisdiction and private taxpaying enterprise, would cut the cost of Government more than half, and thereby end the need for the Federal individual income tax, which would be repealed.

The first section provides:

"The Government of the United States shall not engage in any business, professional, commercial, financial or industrial enterprise except as specified in the Constitution."

This clause will cut the cost of Government in half, making possible the repeal of the 16th—income tax—amendment, cut the national debt tremendously, get us back to a balanced budget and stop inflation.

2. "Just what are some of the businesses the Government is in?

Some of the larger are the Commodity Credit Corporation, a loan company; the Tennessee Valley Authority, a gigantic producer and distributor of electric power and fertilizer; and the Federal Crop Insurance Corporation, an intrusion into the Insurance field. The book, "Where the Money Went," by Willis Stone, lists over 500 others.

3. "But how about all those people who will lose their jobs if the Liberty amendment is adopted?"

Employees of Government businesses that are bought will be better off than before because under private ownership and management the business will prosper. This happened in the case of the General Aniline & Film Co.—now the GAF—and others already sold. Employees of Government businesses with no valid economic purpose, will probably have to look for other jobs, but if they want work they will have no problems. When people have money now taken by the income tax, their increased purchasing power will expand all kinds of business which will create a great need for more employees. There will be more jobs than people to fill them.

4. "How would you get the Government out of these businesses? Who would buy them?"

These business enterprises would be bought by people who want to invest their money, just as other businesses are bought and sold. In 1965 the General Aniline & Film Co., which the Government seized at the beginning of World War II, was sold as a stock corporation. The shares were offered on the open market, and in 1 day 11 million shares of stock were bought for more than $300 million.

A few years earlier the Inland Waterways Corp. was sold in a matter of days for $11 million, although its book value at the time was only slightly over $3 million.

Any businesses that have a valid economic reason for existing would be salable. Those which are economically unsound and guaranteed money losers would be liquidated through the sales of their assets. The proceeds of these sales would reduce our national debt by approximately 25 percent.

5. "How can Government get along if the income tax is repealed? What will they do for money?"

The latest Federal budget shows that individual income taxes supply only 42 percent of the Federal revenue; the rest comes from other sources. There is ample documentation to prove that getting the Federal Government out of these unauthorized businesses would cut the cost of Government at least 50 percent, while revenue is reduced only 42 percent, would give a surplus of 8 percent.

6. "Is the only purpose of the Liberty Amendment just to get the Government out of business and to repeal the income tax?"

Partially. The Liberty Amendment will get the Government out of those businesses it operates without constitutional authority. As a consequence, Government costs will be reduced to such an extent that the Federal Government will not need the personal income tax. The main purpose of the Liberty Amendment, however, is to restore the Constitution to full force and effect. Then the Government will be confined to the business of governing—of protecting individual liberties—and no longer compete with its own citizens.... Repeal of the income tax will increase take home pay 20 percent without changing the rate of pay or the price of things.

7. "Why amend the Constitution? Is not there an easier and quicker way?"

In almost two centuries our Constitution has been amended a comparatively few times. The first 10 amendments—Bill of Rights—were added almost immediately after the Constitution was ratified—in December, 1791—and there have been only 16 added since then. This may seem too slow, but any amendment is unique in that is supersedes anything preceding it which is contrary to it.

Only through an amendment, will we be able to correct the present distortion of our basic law. The Liberty Amendment will clarify the terms of our freedom, rectify the current conflict between Government and people, define our economic liberties and force the Government to abide by that definition.

8. "What freedoms have I lost?"

Year after year our freedoms have been shrinking, by restriction upon restriction, tax upon tax, edict upon edict. Here are a few of the many freedoms lost which were once considered your natural right as Americans.

You do not have sound money any more.

You are not free to plan your future as inflation makes you dollar buy less and less.

You can neither rent, sell, buy, nor exchange without political control.

Neither an employer nor an employee can establish a wage by mutual consent.

You can not operate a business without Government consent and restrictions, and without acting as tax collector.

A doctor can no longer keep his patient's history confidential, or serve patients without Government intervention.

You no longer can receive a full day's pay for a full day's work.

You no longer have any real privacy.

Bank accounts are open to scrutiny, personal affairs are fed into computers, and the last vestiges of privacy are fading into memory. Your private life is no longer private.

9. "If Government continues to grow bigger and bigger, what is going to be the outcome?"

The answer is simple. Growing at its present rate, there is but one ultimate answer—we shall soon have a totalitarian government. Whether we call it communism or by some other name, the despotism imposed will be as terrifying as any other in history.

10. "Haven't there always been waste and corruption in government?"

Waste and corruption in government are nothing new. The bigger government grows, the greater are the opportunities for pork-barrel politics, and the takeover of economic power and resources.

It was this that caused the American Revolution, and our Founding Fathers tried to prevent its recurrence through our Constitution of strictly limited powers.

11. "Was the progressive income tax invented by Karl Marx?"

No, Karl Marx did not invent it. The progressive income tax is almost as old as recorded history, and is the historic way by which people have been subjugated. Every tyrant in history has used it successfully, in one way or another, so Karl Marx included it as one of his 10 rules in the communist Manifesto. The men who drafted our Constiution carefully prohibited a progressive income tax, but this was nullified in 1913. Therefore, the income tax is part of the Constitution and part of our law

and the only way to get rid of it is through another amendment.

12. "Is not the Federal income tax unconstitutional?"

The Federal income tax is completely constitutional as long as we have the 16th amendment. The statement that it is unconstitutional is wishful thinking. All of the hideous consequences of the 16th amendment will remain with us until it is repealed as the Liberty Amendment provides.

13. "Is not the progressive income tax the fairest kind of tax because it is based on ability to pay?"

It may be made to sound fair, but it does not work that way. Actually, it a form of slavery, draining the life energy of a person, penalizing success, and destroying initiative.

If you are poor enough, you do not pay; and if you are rich enough, you do not pay either. If you are a responsible productive worker, you carry the load. Tax foundation figures prove you work until the middle of May each year just to pay taxes.

14. "Why eliminate the personal income tax? Why not reduce taxes gradually?"

This question is usually asked to divert attention from the Liberty amendment, designed to cut spending not authorized by the Constitution, which will remove the need for the income tax. Eliminating the Federal income tax is the only way to get tax relief for the people.

Political candidates may talk about cutting taxes, but historically this never happens. The application of the Liberty amendment can actually do it.

15. "What will replace the income tax?"

Nothing need replace the income tax. Reduced spending imposed by the Liberty amendment will remove the need for income taxes. Recent Government budgets estimate that only 42 precent of revenue comes from individual income taxes. Excise taxes, duties and imposts and other miscellaneous revenues provide the other 58 percent of revenues. The amendment will cut spending 50 percent, removing the need for income taxes and make tax cuts possible in other areas.

16. "How are you going about getting the Liberty amendment passed?"

The fifth article of the Constitution prescribes two valid methods for amending the Constitution. An amendment may be proposed by two-thirds of both Houses of Congress concurring; or the legislatures of two-thirds of the several States—34—may require Congress to call a Constitutional Convention to propose such amendments, which, in either case, become a part of the Constitution when three-quarters—38 States—ratify a proposed amendment.

The Liberty Amendment resolution is being advanced in both ways. It is now pending in Congress as House Joint Resolution 23. It has also been approved by the Legislatures in seven of the sovereign States and is pending in several others.

17. "Why are you going to State legislatures to amend the Federal Constitution?"

The fifth article of the Constitution provides this method of causing the amendments to be proposed. Then, too, the States must eventually ratify to make it a part of the Constitution. This country consists of a union of sovereign States which hold the only power to ratify amendments and State legislatures hold concurrent power under the Constitution to initiate such amendments as they, the States and the people within them, require.

18. "Who's behind the Liberty Amendment? Where does the money come from?"

The folks behind the Liberty Amendment are just ordinary people with an extraordinary desire to hold fast to the ideals on which this country was founded. The organization is nonpolitical, nonpartisan, nonbigoted, nonsectarian, and certainly nonprofitable. Its aim is to educate the public on the values of the Constitution and the means of restoring it before it is too late. Neither big business nor big labor, per se, has subscribed to the Liberty Amendment. Its financial support depends upon contributions—some small, some larger—from folks in every State. With the exception of an understaffed headquarters office, everyone in an unpaid volunteer, including national chairman, directors, State chairmen, committemen and members.

19. "Why allow only 3 years for the Government to sell all those buinesses? Won't they need more time than?"

Three years is adequate and we have ample proof of it. Inland Waterways Corp. was sold in a matter of days. The General Aniline and Film Corp., nationalized in World War II, was sold on the open market in a single day for more than $300,000,000. The liquidation of the entire synthetic rubber industry was accomplished and fully paid for by private enterprise in less than 9 months. These and many other cases are discussed in the book, "Where the Money Went," by Willis Stone.

Properties and facilities affected that are not sold within the 3 years will revert to state jurisdiction.

20. "I think the Liberty Amendment is a good idea, but isn't it too late?"

No. It is not too late. It is never too late to stop the process of political confiscation as long as the amendment process can still be employed.

21. "Why do politicians make wild promises to give 'something to everybody' even when they know they cannot according to the Constitution?"

Men of high integrity in their personal lives often enter politics and adopt a new set of values in a game of bargaining for power. When they acquire a thirst for power, they resent being hampered by the Constitution, the Liberty Amendment, or anything else.

Legislators can be restrained, however, by the voter at the polls who will vote against every candidate who violates the Constitution. Know what the Constitution guarantees, and then require all candidates and office holders to support basic American principles.

22. "Is not the Constitution too oldfashioned for today's complex society?"

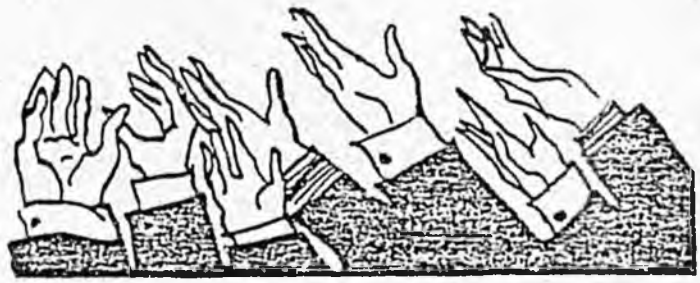
Our Constitution, written almost 200 years ago, appears made for today's world which accents youth and change. The Constitution of the United States is a most revolutionary document, because it was based upon the radical idea that men should be left largely free to pursue their own affairs.

The men who drafted the Constitution foresaw that our life style would change, but human nature would not.

They built into the Constitution safeguards to make it possible for people to control the avarice and bullying instincts of politicians when they taste power. As Thomas Jefferson said:

"Let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

23. "Does the 'general welfare' clause in the Constitution mean that the Government is responsible for our well-being?"



Probably one of the most misused phrases is the "general welfare clause." It is often taken out of context and distorted unmercifully. The term "general welfare" appears only twice in the Constitution: once, in the Preamble as one of the general purposes of the Constitution, and again in article 1, section 8, as one of the reasons why the Constitution grants to Congress certain specified powers. The two words—general welfare—are just two descriptive words in a phrase, within a clause, within a single sentence which is 18 paragraphs in length. It is used by the unscrupulous as a peg on which to hang their pet schemes which violate the intent and purposes of the Constitution.

24. "Do you think the courts that now ignore the Constitution will abide by the terms of the Liberty Amendment when it is added to the Constitution?"

Of course they will. Once the people speak, and the Liberty Amendment is added to the Constitution, all courts and other Federal agencies will be compelled to bide by it.

As a classic precedent for this: more than a century ago slavery was lawful in certain States. The courts were ruling that it was lawful in other States, regardless of

State laws and State constitutions. This was the conflict which brought about the Civil War. The 13th amendment resolved the question by abolishing slavery and involuntary servitude. That amendment invalidated hundreds of court decisions and statutes, and the question was settled with apparent permanence. Similarly, the Liberty Amendment will restore the equities and justice of the Constitution as written and wipe out all court decisions, statutes, Executive Orders, or bureaucratic directives and regulations which are contrary to it.

25. "If only Congress has the power to write Federal laws, where does the President get his authority to issue Executive Orders, such as ceilings on rents, prices, and wages?"

Executive Orders originally were issued by the Chief Executive to members of the executive branch relating to the conduct of their assigned duties. This has changed until now they have the power of law. The fact that it has been accepted as law by the administration does not make it any more legal.

An Executive Order which assumes a legislative power is improper as it has no constitutional authority. The President has no legitimate power to issue Executive Orders that legislate. Neither does any agency of Government have any power to issue "regulations" which legislate. Congress alone has the power to legislate, as provided for in article 1, section 1 of the Constitution and limited as article 6, paragraph 2 provides.

26. "The book, 'Where the money Went,' says the Patent Office, the Central Intelligence Agency, Defense Department, and other agencies will be affected by the Liberty Amendment. Would these have to be sold?"

No, these agencies and a great many others on the list will not be abolished, because they do have important constitutional functions but those activities which are not constitutionally authorized will end.

These agencies appear in the book because their activities have extended into areas not constitutionally authorized.

The Patent Office, for instance, has produced electronic equipment in competition with private enterprise. The Defense Department is operating railroads, barge lines, hotels, restaurants, saloons, and they even manufacture ladies underwear. The Central Intelligence Agency, according to the U.S. budget, is engaged also in roadbuilding, real estate, and property management.

27. "Who, other than the Federal Government, could possibly carry out the really big jobs, such as flood control, or drought relief?"

Individuals, local districts, and States have the ability to handle all such problems themselves without depending upon Washington, D.C.

Actually, the Federal Government spends our tax money lavishly, while pretending to do for us what we can do better for ourselves. The big jobs they undertake almost invariably are badly done and cost twice as much as they should. When a crisis arises the problems are of a local nature, interest is high, and the people directly affected are far better able to know and work out their own problems than someone from the Federal Government.

Hoover Dam was built by private enterprise, whereas Tennessee Valley Authority was built by the Federal Government and so far it has cost the taxpayers billions of dollars. Our Constitution grants to the Federal Government no authority to take on responsibility for such things as disaster relief or flood control.

28. "How could local and State government get along without Federal aid to finance such things as care of the handicapped and the needy?"

The only way the people within our States and localities can ever handle these local problems is by stopping federal intrusion into our domestic affairs. The Federal Government's job is to govern and regulate and protect us from external dangers. It is failing in this, its assigned task, while assuming the power to invade sovereign